

PLEASE NOTE: In most BUT NOT ALL instances, the page and line numbering of bills on this web site correspond to the page and line numbering of the official printed version of the bills.

House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HOUSE BILL 2653

AN ACT

AMENDING TITLE 36, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5;
RELATING TO THE PACE PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 29, Arizona Revised Statutes, is amended
3 by adding article 5, to read:

4 ARTICLE 5. PACE PROGRAM

5 36-2999.01. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ADMINISTRATION" MEANS THE ARIZONA HEALTH CARE COST CONTAINMENT
8 SYSTEM ADMINISTRATION.

9 2. "CAPITATION RATE" MEANS A MODE OF PAYMENT THAT THE PACE
10 ORGANIZATION RECEIVES FOR THE DELIVERY OF SERVICES TO MEMBERS PURSUANT TO
11 THIS ARTICLE AND THAT IS BASED ON A FIXED RATE PER PERSON NOTWITHSTANDING THE
12 AMOUNT OF SERVICES PROVIDED TO A MEMBER.

13 3. "CENTERS FOR MEDICARE AND MEDICAID SERVICES" MEANS THE FEDERAL
14 AGENCY UNDER THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES THAT
15 IS RESPONSIBLE FOR APPROVING THE PACE PROGRAM AND JOINING THE STATE IN
16 SIGNING AN AGREEMENT WITH THE PACE PROGRAM ONCE IT HAS BEEN APPROVED AS A
17 PROVIDER UNDER 42 CODE OF FEDERAL REGULATIONS PART 460.

18 4. "DEPARTMENT" MEANS THE DEPARTMENT OF ECONOMIC SECURITY.

19 5. "DIRECTOR" MEANS THE DIRECTOR OF THE ARIZONA HEALTH CARE COST
20 CONTAINMENT SYSTEM ADMINISTRATION.

21 6. "ELIGIBLE PARTICIPANT" MEANS A PERSON WHO:

22 (a) IS A RESIDENT OF THIS STATE AND A UNITED STATES CITIZEN OR A
23 PERSON WHO MEETS THE REQUIREMENTS FOR QUALIFIED ALIEN STATUS AS DETERMINED
24 PURSUANT TO SECTION 36-2903.03, WHO ENTERED THE UNITED STATES ON OR BEFORE
25 AUGUST 21, 1996 OR WHO ENTERED THE UNITED STATES ON OR AFTER AUGUST 22, 1996
26 AND WHO IS A MEMBER OF AN EXCEPTION GROUP UNDER PUBLIC LAW 104-193, SECTION
27 412.

28 (b) MEETS THE ELIGIBILITY CRITERIA PURSUANT TO SECTION 36-2934.

29 (c) NEEDS INSTITUTIONAL SERVICES AS DETERMINED PURSUANT TO SECTION
30 36-2936.

31 (d) IS DEFINED AS ELIGIBLE PURSUANT TO SECTION 1902(a)(10)(A)(ii)(XV)
32 AND (XVI) OF TITLE XIX OF THE SOCIAL SECURITY ACT AND WHO MEETS THE INCOME
33 REQUIREMENTS OF SECTION 36-2950 OR IS WILLING TO PAY PRIVATE FEES.

34 (e) IS AT LEAST FIFTY-FIVE YEARS OF AGE.

35 (f) RESIDES IN THE PACE ORGANIZATION'S SERVICE AREA ON ENROLLMENT.

36 (g) QUALIFIES FOR MEDICARE.

37 (h) IS WILLING TO ABIDE BY THE REQUIREMENT THAT ENROLLEES RECEIVE ALL
38 HEALTH AND LONG-TERM CARE SERVICES EXCLUSIVELY FROM THE PACE ORGANIZATION AND
39 ITS CONTRACTED OR REFERRED PROVIDERS.

40 (i) IS ABLE TO BE MAINTAINED IN A COMMUNITY BASED SETTING AT THE TIME
41 OF ENROLLMENT WITHOUT JEOPARDIZING THE PERSON'S HEALTH OR SAFETY OR THE
42 HEALTH AND SAFETY OF OTHERS.

43 7. "HOME AND COMMUNITY BASED SERVICES" MEANS SERVICES DESCRIBED IN
44 SECTION 36-2939, SUBSECTION B, PARAGRAPH 2 AND SUBSECTION C.

45 8. "INSTITUTIONAL SERVICES" MEANS SERVICES DESCRIBED IN SECTION
46 36-2939, SUBSECTION A, PARAGRAPH 1 AND SUBSECTION B, PARAGRAPH 1.

1 9. "INTERDISCIPLINARY TEAM" MEANS PACE STAFF AND PACE SUBCONTRACTORS
2 WHO HAVE CURRENT AND APPROPRIATE LICENSURE, CERTIFICATION OR ACCREDITATION
3 AND WHO ARE RESPONSIBLE FOR ASSESSMENT AND DEVELOPMENT OF THE PACE
4 PARTICIPANT'S CARE PLAN AND MAY CONDUCT ASSESSMENTS OF PACE PARTICIPANTS AND
5 PROVIDE SERVICES TO PACE PARTICIPANTS WITHIN THEIR SCOPE OF PRACTICE.

6 10. "MEMBER" MEANS AN ELIGIBLE PERSON WHO IS ENROLLED IN PACE.

7 11. "NONPARTICIPATING PROVIDER" MEANS A PROVIDER WHO DOES NOT HAVE A
8 CONTRACTUAL RELATIONSHIP WITH THE PACE PROGRAM.

9 12. "PACE" MEANS THE PROGRAM FOR ALL-INCLUSIVE CARE FOR THE ELDERLY AS
10 DEFINED IN SECTION 4801 OF THE BALANCED BUDGET ACT OF 1997 AND AUTHORIZED
11 UNDER SECTIONS 1894 AND 1934 OF THE SOCIAL SECURITY ACT.

12 13. "PACE CENTER" MEANS A FACILITY OPERATED BY A PACE PROGRAM WHERE
13 PRIMARY CARE AND OTHER SERVICES ARE FURNISHED TO PACE PARTICIPANTS.

14 14. "PACE PROGRAM" MEANS A PROGRAM THAT:

15 (a) IS DEFINED UNDER SECTION 1894(a)(2) OF THE SOCIAL SECURITY ACT.

16 (b) HAS AN AGREEMENT TO OPERATE A PACE PROGRAM IN ACCORDANCE WITH 42
17 CODE OF FEDERAL REGULATIONS PART 460.

18 (c) IS A PERMANENT PROVIDER TYPE UNDER MEDICARE THAT ALLOWS STATES THE
19 OPTION TO PAY FOR PACE SERVICES UNDER MEDICAID.

20 (d) IS CAPITATED BY BOTH MEDICARE AND MEDICAID OR MEDICARE AND PRIVATE
21 PAY TO PROVIDE ALL MEDICAL AND LONG-TERM CARE SERVICES.

22 15. "PACE PROGRAM AGREEMENT" MEANS AN AGREEMENT BETWEEN A PACE PROGRAM,
23 CENTERS FOR MEDICARE AND MEDICAID SERVICES AND THE ADMINISTRATION.

24 16. "PARTICIPANT" MEANS AN INDIVIDUAL WHO IS ENROLLED IN A PACE
25 PROGRAM.

26 17. "SECTION 1115 WAIVER" MEANS THE RESEARCH AND DEMONSTRATION WAIVER
27 GRANTED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

28 18. "SERVICE AREA" MEANS THE GEOGRAPHIC AREA IN WHICH THE PACE PROGRAM
29 HAS AGREED TO PROVIDE SERVICES UNDER THE PACE PROGRAM AGREEMENT.

30 19. "SPECIAL HEALTH CARE DISTRICT" MEANS A SPECIAL HEALTH CARE DISTRICT
31 ORGANIZED PURSUANT TO TITLE 48, CHAPTER 31.

32 20. "STATE PLAN" MEANS A WRITTEN AGREEMENT BETWEEN THE CENTERS FOR
33 MEDICARE AND MEDICAID SERVICES AND THE ARIZONA HEALTH CARE COST CONTAINMENT
34 SYSTEM ADMINISTRATION THAT DESCRIBES ELIGIBILITY, COVERED SERVICES AND THE
35 REQUIREMENTS FOR PARTICIPATION IN THE MEDICAID PROGRAM EXCEPT THOSE
36 REQUIREMENTS THAT ARE WAIVED PURSUANT TO THE RESEARCH AND DEMONSTRATION
37 WAIVER PURSUANT TO SECTION 1115 OF THE SOCIAL SECURITY ACT.

38 21. "UNIFORM ACCOUNTING SYSTEM" MEANS A STANDARD METHOD OF COLLECTING,
39 RECORDING AND SAFEGUARDING PACE DATA IN THIS STATE.

40 36-2999.02. PACE program; powers and duties of the director;
41 expenditure limitation

42 A. THE PACE PROGRAM IS ESTABLISHED TO PROVIDE MANAGED CARE BENEFITS
43 FOR THE FRAIL ELDERLY THROUGH A COMPREHENSIVE MEDICAL AND SOCIAL SERVICE
44 DELIVERY SYSTEM THAT USES INTERDISCIPLINARY TEAMS IN AN ADULT DAY HEALTH
45 CENTER. THE ADMINISTRATION SHALL OFFER THE PACE PROGRAM AS A VOLUNTARY
46 OPTION FOR INDIVIDUALS WHO ARE AT LEAST FIFTY-FIVE YEARS OF AGE, LIVE IN THE

1 PACE SERVICE AREA AND ARE CERTIFIED AS ELIGIBLE FOR NURSING HOME LEVEL OF
2 CARE.

3 B. THE ADMINISTRATION SHALL SERVE AS THE STATE ADMINISTERING AGENCY
4 UNDER 42 CODE OF FEDERAL REGULATIONS PART 46, WHICH INCLUDES ADDITIONAL
5 OBLIGATIONS OF COORDINATION WITH CENTERS FOR MEDICARE AND MEDICAID SERVICES
6 IN THE ADMINISTRATION OF THE MEDICARE ASPECTS OF THE PACE PROGRAM. THE
7 DIRECTOR IN THE PERFORMANCE OF ALL DUTIES SHALL CONSIDER THE USE OF EXISTING
8 PROGRAMS, RULES AND PROCEDURES IN THE COUNTIES AND DEPARTMENT WHERE
9 APPROPRIATE IN MEETING FEDERAL REQUIREMENTS.

10 C. THE ADMINISTRATION HAS FULL OPERATIONAL RESPONSIBILITY FOR THE PACE
11 PROGRAM IN ACCORDANCE WITH 42 CODE OF FEDERAL REGULATIONS PART 460, WHICH
12 SHALL INCLUDE THE FOLLOWING:

13 1. CONTRACTING WITH PACE PROGRAMS IN COMPLIANCE WITH ALL APPLICABLE
14 FEDERAL LAWS. THE ADMINISTRATION SHALL NOT CONTRACT WITH MORE THAN FIVE
15 QUALIFIED PACE PROGRAMS.

16 2. APPROVING THE PACE PROGRAMS' COMPREHENSIVE SERVICE DELIVERY PLANS
17 PURSUANT TO SECTION 36-2999.12

18 3. PROVIDING BY RULE FOR THE ABILITY OF THE DIRECTOR TO REVIEW AND
19 APPROVE OR DISAPPROVE PACE PROGRAMS' APPLICATIONS IN ACCORDANCE WITH FEDERAL
20 LAWS.

21 4. PROVIDING TECHNICAL ASSISTANCE TO THE PACE PROGRAMS.

22 5. DEVELOPING A UNIFORM ACCOUNTING SYSTEM TO BE IMPLEMENTED BY PACE
23 PROGRAMS.

24 6. CONDUCTING QUALITY CONTROL ON ELIGIBILITY DETERMINATIONS AND
25 PREADMISSION SCREENINGS.

26 7. ESTABLISHING AND MANAGING A COMPREHENSIVE SYSTEM FOR ASSURING THE
27 QUALITY OF CARE DELIVERED BY THE PACE PROGRAMS AS REQUIRED BY FEDERAL LAW.

28 8. ESTABLISHING AN ENROLLMENT SYSTEM.

29 9. ESTABLISHING A MEMBER TRACKING SYSTEM.

30 10. ESTABLISHING AND MANAGING A METHOD TO PREVENT FRAUD BY APPLICANTS,
31 MEMBERS, ELIGIBLE PERSONS, PACE PROGRAMS, PROVIDERS AND NONPARTICIPATING
32 PROVIDERS AS REQUIRED BY FEDERAL LAW.

33 11. COORDINATING BENEFITS AS PROVIDED IN SECTION 36-2999.17.

34 12. ESTABLISHING STANDARDS FOR THE COORDINATION OF SERVICES.

35 13. ESTABLISHING FINANCIAL AND PERFORMANCE AUDIT REQUIREMENTS FOR PACE
36 PROGRAMS.

37 14. ESTABLISHING REQUIREMENTS AND GUIDELINES FOR THE REVIEW OF TRUSTS
38 FOR THE PURPOSES OF ESTABLISHING ELIGIBILITY FOR THE PACE PROGRAM PURSUANT TO
39 SECTION 36-2999.05 AND POSTELIGIBILITY TREATMENT OF INCOME.

40 D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE
41 ADMINISTRATION MAY CONTRACT BY AN INTERGOVERNMENTAL AGREEMENT WITH AN INDIAN
42 TRIBE, A TRIBAL COUNCIL OR A TRIBAL ORGANIZATION AS A PACE PROGRAM.

43 E. THE DIRECTOR SHALL REQUIRE AS A CONDITION OF A CONTRACT THAT ALL
44 RECORDS RELATING TO CONTRACT COMPLIANCE BE AVAILABLE FOR INSPECTION BY THE
45 ADMINISTRATION SUBJECT TO SUBSECTION F OF THIS SECTION AND THAT THESE RECORDS
46 BE MAINTAINED FOR FIVE YEARS. THE DIRECTOR SHALL ALSO REQUIRE THAT THESE

1 RECORDS BE AVAILABLE ON REQUEST OF THE SECRETARY OF THE UNITED STATES
2 DEPARTMENT OF HEALTH AND HUMAN SERVICES OR ITS SUCCESSOR AGENCY.

3 F. SUBJECT TO APPLICABLE LAWS RELATING TO PRIVILEGE AND PROTECTION,
4 THE DIRECTOR SHALL ADOPT RULES PRESCRIBING THE TYPES OF INFORMATION THAT ARE
5 CONFIDENTIAL AND CIRCUMSTANCES UNDER WHICH THAT INFORMATION MAY BE USED OR
6 RELEASED, INCLUDING REQUIREMENTS FOR PHYSICIAN-PATIENT CONFIDENTIALITY.
7 NOTWITHSTANDING ANY OTHER LAW, THESE RULES SHALL PROVIDE FOR THE EXCHANGE OF
8 NECESSARY INFORMATION AMONG THE PACE PROGRAM, THE ADMINISTRATION AND THE
9 DEPARTMENT FOR THE PURPOSES OF ELIGIBILITY DETERMINATION UNDER THIS ARTICLE.

10 G. THE DIRECTOR SHALL ADOPT RULES THAT SPECIFY METHODS FOR THE
11 TRANSITION OF MEMBERS INTO, WITHIN AND OUT OF THE PACE PROGRAM. THE RULES
12 SHALL INCLUDE PROVISIONS FOR THE TRANSFER OF MEMBERS, THE TRANSFER OF MEDICAL
13 RECORDS AND THE INITIATION AND TERMINATION OF SERVICES.

14 H. THE DIRECTOR SHALL ADOPT RULES THAT PROVIDE FOR WITHHOLDING OR
15 FORFEITING PAYMENTS MADE TO A PACE PROGRAM IF IT FAILS TO COMPLY WITH A
16 PROVISION OF ITS CONTRACT OR WITH RULES ADOPTED PURSUANT TO THIS ARTICLE.

17 I. THE DIRECTOR SHALL:

18 1. ESTABLISH BY RULE THE TIME FRAMES AND PROCEDURES FOR ALL GRIEVANCES
19 AND REQUESTS FOR HEARINGS CONSISTENT WITH SECTION 36-2903.01, SUBSECTION B,
20 PARAGRAPH 4.

21 2. APPLY FOR AND ACCEPT FEDERAL MONIES AVAILABLE UNDER TITLE XIX OF
22 THE SOCIAL SECURITY ACT IN SUPPORT OF THE PACE PROGRAM. IN ADDITION, THE
23 DIRECTOR MAY APPLY FOR AND ACCEPT GRANTS, CONTRACTS AND PRIVATE DONATIONS IN
24 SUPPORT OF THE PACE PROGRAM.

25 3. AT LEAST THIRTY DAYS BEFORE THE ADMINISTRATION IMPLEMENTS A POLICY
26 OR A CHANGE TO AN EXISTING POLICY RELATING TO REIMBURSEMENT, PROVIDE NOTICE
27 TO INTERESTED PARTIES. PARTIES INTERESTED IN RECEIVING NOTIFICATION OF
28 POLICY CHANGES MUST SUBMIT A WRITTEN REQUEST FOR NOTIFICATION TO THE
29 ADMINISTRATION.

30 J. THE DIRECTOR MAY APPLY FOR FEDERAL MONIES AVAILABLE FOR THE SUPPORT
31 OF PROGRAMS TO INVESTIGATE AND PROSECUTE VIOLATIONS ARISING FROM THE
32 ADMINISTRATION AND OPERATION OF THE PACE PROGRAM. AVAILABLE STATE MONIES
33 APPROPRIATED FOR THE ADMINISTRATION OF THE PACE PROGRAM MAY BE USED AS
34 MATCHING MONIES TO SECURE FEDERAL MONIES PURSUANT TO THIS SUBSECTION.

35 K. THE DIRECTOR SHALL ADOPT RULES TO ESTABLISH REQUIREMENTS OF STATE
36 RESIDENCY AND QUALIFIED ALIEN STATUS AS PRESCRIBED IN SECTION 36-2903.03.
37 THE ADMINISTRATION SHALL ENFORCE THESE REQUIREMENTS AS PART OF THE
38 ELIGIBILITY DETERMINATION PROCESS. THE RULES SHALL ALSO PROVIDE FOR THE
39 DETERMINATION OF THE APPLICANT'S COUNTY OF RESIDENCE AND ZIP CODE FOR THE
40 PURPOSE OF DETERMINING AVAILABILITY OF CHOICE OF A PACE PROGRAM.

41 L. THE DIRECTOR SHALL ADOPT RULES IN ACCORDANCE WITH THE STATE PLAN
42 REGARDING POSTELIGIBILITY TREATMENT OF INCOME AND RESOURCES THAT DETERMINE
43 THE PORTION OF A MEMBER'S INCOME THAT IS AVAILABLE FOR PAYMENT FOR SERVICES
44 UNDER THIS ARTICLE. THE RULES SHALL PROVIDE THAT A PORTION OF INCOME MAY BE
45 RETAINED FOR:

1 1. A PERSONAL NEEDS ALLOWANCE FOR MEMBERS RECEIVING INSTITUTIONAL
2 SERVICES OF AT LEAST FIFTEEN PER CENT OF THE MAXIMUM MONTHLY SUPPLEMENTAL
3 SECURITY INCOME PAYMENT FOR AN INDIVIDUAL OR A PERSONAL NEEDS ALLOWANCE FOR
4 MEMBERS RECEIVING HOME AND COMMUNITY BASED SERVICES BASED ON A REASONABLE
5 ASSESSMENT OF NEED.

6 2. THE MAINTENANCE NEEDS OF A SPOUSE OR FAMILY AT HOME IN ACCORDANCE
7 WITH FEDERAL LAW. THE MINIMUM RESOURCE ALLOWANCE FOR THE SPOUSE OR FAMILY AT
8 HOME IS TWELVE THOUSAND DOLLARS ADJUSTED ANNUALLY BY THE SAME PERCENTAGE AS
9 THE PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS,
10 BASED ON A UNITED STATES CITY AVERAGE OF ALL ITEMS, BETWEEN SEPTEMBER 1988
11 AND THE SEPTEMBER BEFORE THE CALENDAR YEAR INVOLVED.

12 3. EXPENSES INCURRED FOR NONCOVERED MEDICAL OR REMEDIAL CARE THAT ARE
13 NOT SUBJECT TO PAYMENT BY A THIRD PARTY PAYOR.

14 M. IN ADDITION TO THE RULES OTHERWISE SPECIFIED IN THIS ARTICLE, THE
15 DIRECTOR MAY ADOPT NECESSARY RULES TO CARRY OUT THIS ARTICLE. RULES ADOPTED
16 BY THE DIRECTOR PURSUANT TO THIS SUBSECTION MAY CONSIDER THE DIFFERENCES
17 BETWEEN RURAL AND URBAN CONDITIONS ON THE DELIVERY OF SERVICES.

18 N. THE DIRECTOR SHALL NOT ADOPT ANY RULE OR ENTER INTO OR APPROVE ANY
19 CONTRACT OR SUBCONTRACT THAT DOES NOT CONFORM TO FEDERAL REQUIREMENTS OR THAT
20 MAY CAUSE THE PACE PROGRAM TO LOSE ANY FEDERAL MONIES TO WHICH IT IS
21 OTHERWISE ENTITLED.

22 O. THE ADMINISTRATION, PACE PROGRAMS AND PROVIDERS MAY ESTABLISH AND
23 MAINTAIN REVIEW COMMITTEES DEALING WITH THE DELIVERY OF CARE. REVIEW
24 COMMITTEES AND THEIR STAFF ARE SUBJECT TO THE SAME REQUIREMENTS, PROTECTIONS,
25 PRIVILEGES AND IMMUNITIES PRESCRIBED PURSUANT TO SECTION 36-2917.

26 P. THE TOTAL AMOUNT OF STATE MONIES THAT MAY BE SPENT IN ANY FISCAL
27 YEAR BY THE ADMINISTRATION FOR LONG-TERM CARE SHALL NOT EXCEED THE AMOUNT
28 APPROPRIATED OR AUTHORIZED BY SECTION 35-173 FOR THAT PURPOSE.

29 Q. THIS ARTICLE DOES NOT IMPOSE A DUTY ON AN OFFICER, AGENT OR
30 EMPLOYEE OF THIS STATE TO DISCHARGE A RESPONSIBILITY OR TO CREATE ANY RIGHT
31 IN A PERSON OR GROUP IF THE DISCHARGE OR RIGHT WOULD REQUIRE AN EXPENDITURE
32 OF STATE MONIES IN EXCESS OF THE EXPENDITURE AUTHORIZED BY LEGISLATIVE
33 APPROPRIATION FOR THAT SPECIFIC PURPOSE.

34 R. EACH INTERDISCIPLINARY TEAM SHALL INCLUDE AT LEAST ONE OF EACH OF
35 THE FOLLOWING:

36 1. ONE OF THE FOLLOWING:

- 37 (a) A PHYSICIAN LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17.
38 (b) A NURSE PRACTITIONER LICENSED PURSUANT TO TITLE 32, CHAPTER 15.
39 (c) A PHYSICIAN ASSISTANT LICENSED PURSUANT TO TITLE 32, CHAPTER 25.

40 2. A REGISTERED NURSE LICENSED PURSUANT TO TITLE 32, CHAPTER 15 OR A
41 LICENSED PRACTICAL NURSE LICENSED PURSUANT TO TITLE 32, CHAPTER 15 WHO IS
42 SUPERVISED BY A REGISTERED NURSE.

43 3. A SOCIAL WORKER WITH A MASTER'S DEGREE WHO IS LICENSED PURSUANT TO
44 TITLE 32, CHAPTER 33 OR A SOCIAL WORKER WITH A BACHELOR'S DEGREE WHO IS
45 SUPERVISED BY A MASTER'S LEVEL SOCIAL WORKER WHO IS LICENSED PURSUANT TO
46 TITLE 32, CHAPTER 33.

- 1 4. AN OCCUPATIONAL THERAPIST WHO IS LICENSED PURSUANT TO TITLE 32,
2 CHAPTER 34 OR AN OCCUPATIONAL THERAPY ASSISTANT WHO IS SUPERVISED BY AN
3 OCCUPATIONAL THERAPIST LICENSED PURSUANT TO TITLE 32, CHAPTER 34.
- 4 5. A RECREATIONAL THERAPIST OR AN ACTIVITY COORDINATOR WITH TWO YEARS'
5 EXPERIENCE.
- 6 6. A PHYSICAL THERAPIST OR A PHYSICAL THERAPY ASSISTANT SUPERVISED BY
7 A PHYSICAL THERAPIST.
- 8 7. A DIETICIAN.
- 9 8. THE PACE CENTER MANAGER.
- 10 9. THE HOME CARE COORDINATOR.
- 11 10. PERSONAL CARE ATTENDANT.
- 12 11. THE DRIVER OR TRANSPORTATION COORDINATOR.
- 13 36-2999.03. Eligibility determination; applications; enrollment
- 14 A. A PERSON WHO IS SEEKING SERVICES PURSUANT TO THIS ARTICLE MUST
15 SUBMIT AN APPLICATION FOR ELIGIBILITY TO THE ADMINISTRATION. THE
16 ADMINISTRATION SHALL REVIEW THE COMPLETED APPLICATION TO DETERMINE IF THE
17 PERSON MEETS THE RESIDENCY AND, IF APPLICABLE, THE ALIENAGE REQUIREMENTS
18 ADOPTED PURSUANT TO SECTION 36-2999.02, SUBSECTION K AND THE ELIGIBILITY
19 CRITERIA PRESCRIBED IN SECTION 36-2999.04.
- 20 B. THE ADMINISTRATION SHALL CONDUCT A PREADMISSION SCREENING PURSUANT
21 TO SECTION 36-2999.08 TO DETERMINE IF THE APPLICANT IS ELIGIBLE FOR SERVICES.
- 22 C. A PERSON WHO IS A RESIDENT OF THIS STATE AND, IF NOT A CITIZEN OF
23 THE UNITED STATES, WHO MEETS THE ALIENAGE REQUIREMENTS OF FEDERAL LAW AND WHO
24 MEETS THE ELIGIBILITY CRITERIA PRESCRIBED IN SECTION 36-2999.04 MAY BE
25 ELIGIBLE FOR ENROLLMENT IN A PACE PROGRAM. IN ADDITION TO THE ELIGIBILITY
26 CRITERIA PRESCRIBED IN SECTION 36-2999.04 AND THE PREADMISSION SCREENING
27 CONDUCTED PURSUANT TO SECTION 36-2999.08, TO BE ELIGIBLE TO ENROLL IN A PACE
28 PROGRAM, A PERSON MUST:
 - 29 1. BE AT LEAST FIFTY-FIVE YEARS OF AGE.
 - 30 2. RESIDE IN A PACE PROGRAM'S SERVICE AREA ON ENROLLMENT.
 - 31 3. BE CERTIFIED BY THE ADMINISTRATION AS ELIGIBLE FOR NURSING HOME
32 LEVEL OF CARE.
 - 33 4. QUALIFY FOR MEDICARE.
 - 34 5. AGREE TO RECEIVE COVERED SERVICES THROUGH THE PACE PROGRAM.
 - 35 6. BE ABLE AT THE TIME OF ENROLLMENT TO LIVE IN A COMMUNITY SETTING
36 WITHOUT JEOPARDIZING THE PERSON'S HEALTH OR SAFETY OR THE HEALTH AND SAFETY
37 OF OTHERS.
- 38 D. THE ADMINISTRATION SHALL FORWARD INTAKE INFORMATION OF POTENTIAL
39 ENROLLEES TO THE PACE PROGRAM STAFF WHO SHALL ASSESS THE APPLICANT'S
40 APPROPRIATENESS FOR ENROLLMENT IN THE PACE PROGRAM IN ACCORDANCE WITH THE
41 REQUIREMENTS OF 42 CODE OF FEDERAL REGULATIONS SECTION 460.152. POTENTIAL
42 ENROLLEES MAY BE DENIED ENROLLMENT BY THE PACE PROGRAM IF IT DETERMINES THE
43 POTENTIAL ENROLLEE WOULD NOT BE ABLE TO BE MAINTAINED IN A COMMUNITY BASED
44 SETTING WITHOUT JEOPARDIZING THE POTENTIAL ENROLLEE'S HEALTH OR SAFETY OR THE
45 HEALTH AND SAFETY OF OTHERS.

1 E. ALL LETTERS TO APPLICANTS REGARDING DENIAL OF ENROLLMENT BY THE
2 PACE PROGRAM MUST INCLUDE THE REASON FOR THE DENIAL AND THE APPLICANT'S
3 APPEAL RIGHTS. THIS LETTER, ALONG WITH DOCUMENTATION OR PERTINENT
4 INFORMATION RELATED TO THE DECISION, MUST BE FORWARDED TO THE ADMINISTRATION
5 FOR REVIEW.

6 36-2999.04. Eligibility criteria; qualifications for coverage;
7 liquidation of assets

8 A. A PERSON MEETS THE ELIGIBILITY CRITERIA OF THIS ARTICLE AND A
9 SECTION 1115 WAIVER IF THE PERSON SATISFIES ONE OF THE FOLLOWING:

10 1. IS ELIGIBLE PURSUANT TO SECTION 36-2901, PARAGRAPH 6, SUBDIVISION
11 (a), ITEM (i) OR (ii) ON THE DATE OF APPLICATION FOR MEDICAL ASSISTANCE UNDER
12 ARTICLE 1 OF THIS CHAPTER AND MEETS THE RESOURCE REQUIREMENTS PRESCRIBED BY
13 FEDERAL LAW.

14 2. WOULD BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME FOR THE AGED,
15 BLIND OR DISABLED OR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BUT IS NOT
16 RECEIVING CASH PAYMENT.

17 3. WOULD BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME FOR THE AGED,
18 BLIND OR DISABLED OR UNDER SECTION 1931(b) OF THE SOCIAL SECURITY ACT EXCEPT
19 FOR THE PERSON'S INSTITUTIONAL STATUS.

20 4. IS IN A MEDICAL INSTITUTION FOR A PERIOD OF AT LEAST THIRTY
21 CONSECUTIVE DAYS AND EXCEPT FOR THE PERSON'S INCOME THE PERSON WOULD BE
22 ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND OR DISABLED OR
23 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND THE PERSON'S GROSS INCOME BEFORE
24 DEDUCTIONS DOES NOT EXCEED THREE HUNDRED PER CENT OF THE SUPPLEMENTAL
25 SECURITY INCOME BENEFIT RATE ESTABLISHED BY SECTION 1611(b)(1) OF THE SOCIAL
26 SECURITY ACT.

27 5. WOULD BE ELIGIBLE FOR MEDICAL ASSISTANCE UNDER THE STATE PLAN IF
28 THE PERSON WAS INSTITUTIONALIZED AND A DETERMINATION HAS BEEN MADE THAT
29 EXCEPT FOR THE PROVISION OF HOME AND COMMUNITY BASED SERVICES THE PERSON
30 WOULD REQUIRE THE LEVEL OF CARE PROVIDED IN A HOSPITAL, SKILLED NURSING
31 FACILITY OR INTERMEDIATE CARE FACILITY.

32 B. IN ADDITION TO MEETING THE REQUIREMENTS OF SUBSECTION A OF THIS
33 SECTION, WITHIN THE TIME SPECIFIED IN FEDERAL LAW BEFORE FILING AN
34 APPLICATION FOR ELIGIBILITY PURSUANT TO SECTION 36-2999.03, A PERSON MAY NOT
35 HAVE TRANSFERRED OR ASSIGNED FOR LESS THAN FAIR CONSIDERATION ASSETS AS
36 DEFINED BY FEDERAL LAW FOR THE PURPOSE OF MEETING THE ELIGIBILITY CRITERIA
37 PURSUANT TO THIS SECTION. IF A TRANSFER OR ASSIGNMENT OCCURRED, THE
38 ADMINISTRATION MAY DENY ELIGIBILITY FOR A PERIOD IN ACCORDANCE WITH FEDERAL
39 LAW. TRANSFERS THAT ARE PERMITTED UNDER FEDERAL LAW DO NOT DISQUALIFY A
40 PERSON FROM ELIGIBILITY FOR SERVICES PURSUANT TO THIS ARTICLE. THIS
41 SUBSECTION ALSO APPLIES TO PERSONS WHO ARE ELIGIBLE PURSUANT TO SECTION
42 36-2901, PARAGRAPH 6, SUBDIVISION (a) AND WHO RECEIVE MEDICAL ASSISTANCE
43 UNDER ARTICLE 1 OF THIS CHAPTER.

44 C. IN ADDITION TO MEETING THE REQUIREMENTS OF SUBSECTION A, PARAGRAPH
45 3 OF THIS SECTION, THE DIRECTOR MAY REQUIRE THAT A PERSON'S NET INCOME SHALL
46 NOT EXCEED A STATE INCOME STANDARD ESTABLISHED BY THE DIRECTOR THAT IS LESS

1 THAN THREE HUNDRED PER CENT OF THE SUPPLEMENTAL SECURITY INCOME BENEFIT RATE
2 ESTABLISHED BY SECTION 1611 OF THE SOCIAL SECURITY ACT.

3 D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PERSON SHALL
4 NOT RECEIVE SERVICES UNDER THIS ARTICLE WHO IS NOT ELIGIBLE PURSUANT TO TITLE
5 XIX OF THE SOCIAL SECURITY ACT OR A SECTION 1115 WAIVER.

6 E. THE ADMINISTRATION SHALL PERIODICALLY REVIEW THE ELIGIBILITY
7 PURSUANT TO THIS SECTION OF EACH MEMBER IN ACCORDANCE WITH FEDERAL LAW.

8 F. THE ADMINISTRATION SHALL DETERMINE A PERSON'S ELIGIBILITY PURSUANT
9 TO THIS SECTION WITHIN THE TIME PERIODS REQUIRED OR ALLOWED BY FEDERAL LAW.

10 G. AN APPLICANT MUST PROVIDE THE ADMINISTRATION WITH A STATEMENT IN
11 ACCORDANCE WITH FEDERAL LAW CONTAINING AT LEAST THE FOLLOWING INFORMATION:

12 1. THE AMOUNT OF PERSONAL AND REAL PROPERTY IN WHICH THE APPLICANT HAS
13 AN INTEREST.

14 2. ALL INCOME THAT THE APPLICANT RECEIVED DURING THE PERIOD
15 IMMEDIATELY BEFORE APPLICATION.

16 3. ANY ASSETS AS DEFINED BY FEDERAL LAW ASSIGNED OR TRANSFERRED BY THE
17 APPLICANT WITHIN THE TIME PRESCRIBED BY FEDERAL LAW IMMEDIATELY BEFORE FILING
18 THE APPLICATION FOR ELIGIBILITY PURSUANT TO SECTION 36-2999.03.

19 4. ANY FURTHER INFORMATION THE DIRECTOR BY RULE REQUIRES TO DETERMINE
20 ELIGIBILITY.

21 H. A DESIGNATED REPRESENTATIVE, AS DEFINED PURSUANT TO RULES ADOPTED
22 BY THE DIRECTOR, OR A PUBLIC EMPLOYEE, WHO PREPARES AND SIGNS OR ASSISTS IN
23 PREPARING AN APPLICATION FOR BENEFITS UNDER THIS ARTICLE ON BEHALF OF AN
24 APPLICANT IS NOT CIVILLY LIABLE FOR GOOD FAITH ACTS AND OMISSIONS.

25 36-2999.05. Creation of trusts; eligibility for the PACE
26 program; share of costs

27 A. THE ADMINISTRATION HAS SOLE AUTHORITY TO QUALIFY ANY TRUSTS THAT
28 ARE CREATED PURSUANT TO SECTION 1917(d)(4)(A), (B) AND (C) OF THE SOCIAL
29 SECURITY ACT AND SHALL REQUIRE THAT THE TRUSTEE PROVIDE THE FOLLOWING
30 INFORMATION AND ASSURANCES WHEN THE TRUSTEE SUBMITS TRUST DOCUMENTS TO THE
31 ADMINISTRATION FOR APPROVAL:

32 1. SPECIFIC LANGUAGE THAT PROTECTS THE STATE'S BENEFICIARY INTEREST IN
33 THE TRUST AND THAT NAMES THE ADMINISTRATION OR THE STATE MEDICAID AGENCY AS
34 THE PRIMARY BENEFICIARY OF THE TRUST IF THE TRUST IS TERMINATED BEFORE OR ON
35 THE DEATH OF THE MEMBER. THE TRUST DOCUMENT SHALL STATE THAT THE TRUSTEE
36 SHALL PAY ON A MONTHLY BASIS THE SHARE OF COST AMOUNT ESTABLISHED BY THE
37 POSTELIGIBILITY TREATMENT OF INCOME DETERMINATION PURSUANT TO SUBSECTION D OF
38 THIS SECTION.

39 2. A PROVISION THAT REQUIRES THE DIRECT DEPOSIT OF ALL INCOME ASSIGNED
40 TO THE TRUST BY THE GRANTOR, IF LEGALLY PERMISSIBLE, INTO AN ACCOUNT TITLED
41 TO THE TRUST.

42 3. A DETAILED DESCRIPTION OF HOW THE TRUST FUNDS WILL BE ADMINISTERED
43 AND DISBURSED. THE TRUSTEE SHALL SUBMIT THE DESCRIPTION AT THE SAME TIME
44 THAT THE TRUSTEE SUBMITS THE TRUST DOCUMENT TO THE ADMINISTRATION FOR REVIEW.
45 THE ADMINISTRATION SHALL REVIEW THE PLANNED DISBURSEMENTS OR PLAN APPROVED BY
46 THE PROBATE COURT AND RENDER A DECISION ON THE APPROPRIATENESS OF THE

1 DISBURSEMENTS OR PLAN WITHIN THE TIME FRAMES ESTABLISHED BY FEDERAL LAW FOR
2 PROCESSING APPLICATIONS FOR MEDICAL ASSISTANCE. THE ADMINISTRATION MAY
3 EXTEND THIS LIMIT TO ENABLE A TRUSTEE TO AMEND A TRUST OR TO PROVIDE
4 ADDITIONAL INFORMATION REQUESTED BY THE ADMINISTRATION. THE TRUSTEE SHALL
5 REPORT TO THE ADMINISTRATION ANY NEW TRUST FUNDING OR MODIFICATIONS TO THE
6 PLANNED DISBURSEMENTS FROM THE TRUST AT LEAST FORTY-FIVE DAYS BEFORE THE
7 INTENDED ACTION OR CHANGE BY THE TRUSTEE. UNDER EXTENUATING CIRCUMSTANCES,
8 THE TRUSTEE MAY FORGO THE FORTY-FIVE DAY REPORTING REQUIREMENT AND PROVIDE
9 NOTICE TO THE ADMINISTRATION WITHIN THIRTY DAYS AFTER THE DATE OF
10 DISBURSEMENT. IF THE ADMINISTRATION DETERMINES THAT THE DISBURSEMENT WAS NOT
11 APPROPRIATE, OR THAT ANY OTHER PROVISIONS OF THE TRUST OR THIS SECTION HAVE
12 BEEN VIOLATED, THE ADMINISTRATION SHALL CONSIDER THE TRUST IN ACCORDANCE WITH
13 SUBSECTION F OF THIS SECTION. THE TRUSTEE MAY APPEAL THIS DECISION, BUT THE
14 PROVISIONS DESCRIBED IN SUBSECTIONS I AND J OF THIS SECTION SHALL BE APPLIED
15 IF THE ADMINISTRATION'S ACTION IS AFFIRMED. ON REQUEST OF THE
16 ADMINISTRATION, THE TRUSTEE SHALL PROVIDE VERIFICATION OF HOW THE FUNDS WERE
17 ADMINISTERED.

18 4. A STATEMENT SIGNED BY THE TRUSTEE ACKNOWLEDGING THAT AN ADVERSE
19 ACTION MAY BE TAKEN AGAINST THE MEMBER'S ELIGIBILITY IF THE TRUSTEE
20 IMPROPERLY VIOLATES THE TERMS OF THE TRUST OR THE REQUIREMENTS OF THIS
21 SECTION OR IF THE TRUSTEE TAKES ANY ACTION THAT LIMITS THE ADMINISTRATION'S
22 BENEFICIARY INTEREST IN THE TRUST.

23 5. SPECIFIC LANGUAGE THAT PROTECTS THE TRUST FOR THE BENEFIT OF THE
24 TRUST BENEFICIARY. THE TRUST DOCUMENT SHALL STATE THAT DISBURSEMENTS SHALL
25 NOT BE MADE FOR OTHER THAN THOSE PURPOSES ALLOWED PURSUANT TO THIS SECTION.

26 B. FOR A TRUST THAT QUALIFIES PURSUANT TO SUBSECTION A OF THIS
27 SECTION, THE TRUSTEE SHALL NOT MAKE ANY DISBURSEMENTS FROM THE TRUST OTHER
28 THAN FOR THE FOLLOWING:

29 1. REASONABLE LEGAL AND PROFESSIONAL EXPENSES RELATED TO THE TRUST
30 INCLUDING:

31 (a) TRUST TAXES.

32 (b) TRUST INVESTMENT FEES.

33 (c) REASONABLE PROFESSIONAL EXPENSES, INCLUDING TRUSTEE, ACCOUNTING
34 AND ATTORNEY FEES RELATED TO THE ADMINISTRATION OF THE TRUST.

35 2. THE POSTELIGIBILITY SHARE OF COST AS COMPUTED PURSUANT TO SECTION
36 36-2999.02.

37 3. FOR TRUSTS CREATED PURSUANT TO SECTION 1917(d)(4)(B) OF THE SOCIAL
38 SECURITY ACT, A DISBURSEMENT TO THE BENEFICIARY EQUAL TO THE PERSONAL NEEDS
39 ALLOWANCE AS COMPUTED PURSUANT TO SECTION 36-2999.02.

40 4. HEALTH INSURANCE PREMIUMS, MEDICALLY NECESSARY MEDICAL EXPENSES AND
41 SPECIAL MEDICAL NEEDS OF THE BENEFICIARY INCLUDING:

42 (a) EXPENSES REQUIRED TO MAKE THE HOME ACCESSIBLE TO THE PERSON.

43 (b) THE PURCHASE AND MAINTENANCE OF A SPECIALLY EQUIPPED VEHICLE
44 TITLED TO THE TRUST OR TO THE BENEFICIARY WITH A LIEN AGAINST THE VEHICLE
45 HELD BY THE TRUST IN AN AMOUNT EQUAL TO THE CURRENT MARKET VALUE OF THE
46 VEHICLE.

- 1 (c) DURABLE MEDICAL EQUIPMENT.
2 (d) OVER-THE-COUNTER SUPPLIES AND MEDICATIONS, INCLUDING DIAPERS,
3 LOTIONS AND CLEANSING WIPES.
4 (e) PERSONAL CARE SERVICES THAT ARE DETERMINED TO BE MEDICALLY
5 NECESSARY BY THE PACE PROGRAM AND THAT ARE PROVIDED BY A PERSON WHO IS
6 REGISTERED BY THE ADMINISTRATION TO PROVIDE THE SERVICES AND WHO IS NOT A
7 FINANCIALLY RESPONSIBLE RELATIVE OF THE BENEFICIARY. FOR THE PURPOSES OF
8 THIS SUBDIVISION, "FINANCIALLY RESPONSIBLE RELATIVE" MEANS THE SPOUSE OF THE
9 BENEFICIARY OR, IF THE BENEFICIARY IS A CHILD UNDER EIGHTEEN YEARS OF AGE,
10 THE PARENT OR GUARDIAN OF THE BENEFICIARY.
- 11 5. MAINTENANCE PAYMENTS FOR THE SPOUSE OR FAMILY IN ACCORDANCE WITH 42
12 UNITED STATES CODE SECTION 1396r-5(d)(1) AND (2) AND SECTION 36-2932,
13 SUBSECTION L.
- 14 6. GUARDIANSHIP AND CONSERVATORSHIP FEES FOR THE TRUST BENEFICIARY
15 BASED ON THE FAIR MARKET VALUE OF THE SERVICES PROVIDED.
- 16 7. THE FOLLOWING EXPENSES FOR THE BENEFIT OF THE BENEFICIARY,
17 EXCLUDING GIFTS TO, PAYMENTS FOR OR LOANS TO OTHER PERSONS, WHETHER THESE ARE
18 IN CASH OR IN KIND:
- 19 (a) ENTERTAINMENT, EDUCATIONAL OR VOCATIONAL NEEDS OR ITEMS THAT ARE
20 CONSISTENT WITH THE PERSON'S ABILITY TO USE THESE ITEMS.
21 (b) OTHER EXPENSES THAT ARE INDIVIDUALLY APPROVED BY THE DIRECTOR.
22 (c) LIVING EXPENSES FOR FOOD, CLOTHING AND SHELTER. IF HOME PROPERTY
23 OR OTHER REAL PROPERTY IS PURCHASED BY THE TRUST IT MUST BE TITLED TO THE
24 TRUST.
25 (d) INCOME TAXES OWED ON INCOME FROM TRUST INVESTMENTS OR ON INCOME OF
26 THE BENEFICIARY THAT IS ASSIGNED TO THE TRUST WHEN AN ACTUAL TAX LIABILITY IS
27 ESTABLISHED.
28 (e) PROVISION FOR BURIAL EXPENSES THAT IS LIMITED TO ONE OF THE
29 FOLLOWING METHODS:
30 (i) PURCHASE OF A PREPAID BURIAL PLAN FUNDED BY AN IRREVOCABLE LIFE
31 INSURANCE POLICY, IRREVOCABLE BURIAL ACCOUNT, IRREVOCABLE TRUST ACCOUNT OR
32 IRREVOCABLE ESCROW ACCOUNT.
33 (ii) PURCHASE OF LIFE INSURANCE TO FUND A BURIAL PLAN FOR THE
34 BENEFICIARY WITH A FACE VALUE THAT DOES NOT EXCEED ONE THOUSAND FIVE HUNDRED
35 DOLLARS AFTER ALLOWING DEDUCTIONS FOR BURIAL PLOT ITEMS AS DEFINED BY THE
36 ADMINISTRATION.
37 (iii) FUNDING A BURIAL FUND ACCOUNT IN AN AMOUNT NOT TO EXCEED ONE
38 THOUSAND FIVE HUNDRED DOLLARS.
39 (f) TRAVEL EXPENSES FOR A COMPANION, OTHER THAN A BENEFICIARY'S
40 FINANCIALLY RESPONSIBLE RELATIVE, WHEN A COMPANION IS REQUIRED TO ENABLE THE
41 BENEFICIARY TO TRAVEL FOR NONMEDICAL REASONS.
42 C. FOR TRUSTS THAT QUALIFY PURSUANT TO SUBSECTION A OF THIS SECTION,
43 THE ADMINISTRATION SHALL CONSIDER ONLY THE PERSON'S PROPORTIONATE SHARE OF
44 EXPENSES AS FOR THE BENEFIT OF THE TRUST BENEFICIARY IF THESE EXPENSES ALSO
45 BENEFIT OTHERS.

1 D. FOR TRUSTS THAT ARE CREATED PURSUANT TO SECTION 1917(d)(4)(A), (B)
2 AND (C) OF THE SOCIAL SECURITY ACT, THE ADMINISTRATION SHALL REQUIRE THAT THE
3 POSTELIGIBILITY TREATMENT OF INCOME THAT IS DETERMINED PURSUANT TO SECTION
4 36-2999.02 INCLUDE THE INCOME ASSIGNED TO THE TRUST AND ANY OTHER COUNTABLE
5 INCOME RECEIVED BY THE MEMBER, EXCLUDING INTEREST AND DIVIDENDS EARNED BY THE
6 TRUST CORPUS AND ADDED TO THE PRINCIPAL. EACH MONTH THE ADMINISTRATION SHALL
7 COUNT FOR INCOME ELIGIBILITY PURPOSES ANY DISBURSEMENTS MADE TO THE
8 BENEFICIARY AND ANY PAYMENTS MADE ON BEHALF OF THE BENEFICIARY FOR FOOD OR
9 SHELTER. THE ADMINISTRATION SHALL COUNT DISBURSEMENTS ISSUED FOR THE
10 PERSONAL NEEDS ALLOWANCE PURSUANT TO SUBSECTION B, PARAGRAPH 3 OF THIS
11 SECTION AS DISBURSEMENTS FOR FOOD OR SHELTER.

12 E. IN ORDER FOR A TRUST THAT IS CREATED PURSUANT TO SECTION
13 1917(d)(4)(B) OF THE SOCIAL SECURITY ACT TO BE CONSIDERED UNDER THIS SECTION,
14 THE SUM OF THE INDIVIDUAL'S COUNTABLE NONTRUST INCOME AND THE INCOME ASSIGNED
15 TO THE TRUST, EXCLUDING INTEREST AND DIVIDENDS EARNED BY THE TRUST CORPUS AND
16 ADDED TO THE PRINCIPAL SHALL BE EQUAL TO OR LESS THAN THE PRIVATE PAY RATE
17 ESTABLISHED IN THE STATE PLAN.

18 F. FOR REVOCABLE OR IRREVOCABLE TRUSTS THAT ARE CREATED PURSUANT TO
19 SECTION 1917(d)(3)(A) OR (B) OF THE SOCIAL SECURITY ACT, THE ADMINISTRATION
20 SHALL INCLUDE THE INCOME THAT IS RECEIVED BY THE TRUST, EXCLUDING INTEREST
21 AND DIVIDENDS EARNED BY THE TRUST CORPUS AND ADDED TO THE PRINCIPAL OR THAT
22 IS DISBURSED FROM THE TRUST, WHICHEVER IS GREATER, FOR BOTH INCOME
23 ELIGIBILITY CALCULATIONS UNDER SECTION 36-2999.04 AND POSTELIGIBILITY OF
24 INCOME UNDER SECTION 36-2999.02. IN DETERMINING ELIGIBILITY FOR THE PACE
25 PROGRAM, THE ADMINISTRATION SHALL CONSIDER PAYMENTS FROM THE TRUST REGARDLESS
26 OF THE PURPOSE FOR WHICH THE PAYMENT IS MADE.

27 G. NOTWITHSTANDING THIS SECTION, A TRUST THAT IS ESTABLISHED BEFORE
28 AUGUST 11, 1993 SHALL BE EVALUATED IN ACCORDANCE WITH THE PROVISIONS
29 CONTAINED IN THE STATE PLAN.

30 H. IF THE ADMINISTRATION DETERMINES THAT THE TRUSTEE DID NOT REPORT
31 CHANGES IN THE AMOUNT OF TRUST INCOME OR DISBURSEMENTS FROM THE TRUST TO THE
32 ADMINISTRATION IN THE TIME FRAME AND MANNER SPECIFIED IN SUBSECTION A OF THIS
33 SECTION, THE ADMINISTRATION SHALL NOTIFY THE MEMBER OF THE NONCOMPLIANCE AND
34 SHALL PROSPECTIVELY APPLY THE ADVERSE ACTION THAT WOULD HAVE RESULTED IF THE
35 CHANGE HAD BEEN REPORTED IN A TIMELY MANNER. IF BENEFITS FOR THE PACE
36 PROGRAM ARE CONTINUED PENDING A DECISION BY THE DIRECTOR AFTER A HEARING ON A
37 PROPOSED ADVERSE ACTION THAT RESULTS FROM TRUST INCOME OR DISBURSEMENTS AND
38 THE DIRECTOR UPHOLDS THE ADMINISTRATION, THE ADMINISTRATION SHALL APPLY THE
39 ADVERSE ACTION ON A PROSPECTIVE BASIS.

40 I. THE ADMINISTRATION SHALL CONSIDER TRUST DISBURSEMENTS ISSUED IN
41 VIOLATION OF THIS SECTION AS A TRANSFER WITHOUT FAIR CONSIDERATION.

42 J. IF THE ADMINISTRATION DETERMINES THAT THE TRUSTEE IS IN VIOLATION
43 OF THIS SECTION OR THE TERMS OF A NEW OR EXISTING TRUST, THE ADMINISTRATION
44 SHALL CONSIDER ALL TRUST ASSETS HELD IN THE TRUST AND INCOME HELD IN OR
45 PRODUCED BY THE TRUST, AVAILABLE TO THE BENEFICIARY UNDER 42 UNITED STATES
46 CODE SECTION 1396p(d)(3) UNTIL THE TRUSTEE CORRECTS THE VIOLATION.

1 A. THE DIRECTOR SHALL ADOPT RULES ESTABLISHING A UNIFORM STATEWIDE
2 PREADMISSION SCREENING PROGRAM TO DETERMINE IF A PERSON WHO HAS MET THE
3 ELIGIBILITY CRITERIA PRESCRIBED IN SECTION 36-2999.04 IS ELIGIBLE FOR
4 INSTITUTIONAL SERVICES PURSUANT TO THIS ARTICLE. TO BE ELIGIBLE FOR
5 INSTITUTIONAL SERVICES OR HOME AND COMMUNITY BASED SERVICES, A PERSON SHALL
6 HAVE A NONPSYCHIATRIC MEDICAL CONDITION THAT, BY ITSELF OR IN COMBINATION
7 WITH OTHER MEDICAL CONDITIONS, NECESSITATES THE LEVEL OF CARE THAT IS
8 PROVIDED IN A NURSING FACILITY. THESE RULES SHALL ESTABLISH A UNIFORM
9 PREADMISSION SCREENING INSTRUMENT THAT ASSESSES THE FUNCTIONAL, MEDICAL,
10 NURSING, SOCIAL AND DEVELOPMENTAL NEEDS OF THE APPLICANT.

11 B. A PERSON IS NOT ELIGIBLE TO RECEIVE HOME AND COMMUNITY BASED
12 SERVICES UNLESS THAT PERSON HAS BEEN DETERMINED TO NEED INSTITUTIONAL
13 SERVICES AS DETERMINED BY THE PREADMISSION SCREENING INSTRUMENT PURSUANT TO
14 SUBSECTION C OF THIS SECTION. THE ADMINISTRATION SHALL ESTABLISH GUIDELINES
15 FOR THE PERIODIC REASSESSMENT OF EACH MEMBER.

16 C. PREADMISSION SCREENING CONDUCTED PURSUANT TO SUBSECTION B OF THIS
17 SECTION SHALL BE CONDUCTED BY A REGISTERED NURSE LICENSED PURSUANT TO TITLE
18 32, CHAPTER 15 OR A SOCIAL WORKER. THE NURSE OR SOCIAL WORKER SHALL HAVE A
19 PHYSICIAN LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 AVAILABLE FOR
20 CONSULTATION AND MAY USE THE APPLICANT'S ATTENDING PHYSICIAN'S PHYSICAL
21 ASSESSMENT FORM, IF APPROPRIATE, IN ASSESSING NEEDS FOR LONG-TERM CARE
22 SERVICES UNDER THIS ARTICLE. A PHYSICIAN WHO RECEIVES A REFERRAL FROM THE
23 NURSE OR SOCIAL WORKER MAY USE THE PHYSICIAN'S MEDICAL JUDGMENT TO DETERMINE
24 THE MEDICAL ELIGIBILITY OF AN APPLICANT FOR THE PACE PROGRAM OR THE CONTINUED
25 MEDICAL ELIGIBILITY OF A MEMBER OR ELIGIBLE PERSON. IN THE MEDICAL REFERRAL,
26 THE PHYSICIAN SHALL USE THE ESTABLISHED COMBINED THRESHOLDS FOR FUNCTIONAL
27 ABILITY AND MEDICAL CONDITION AS A GUIDE TO DETERMINE THE RISK OF
28 INSTITUTIONALIZATION.

29 D. IF A PERSON WHO IS ELIGIBLE FOR SERVICES PURSUANT TO THIS ARTICLE
30 AND IS ENROLLED WITH A PACE PROGRAM PURSUANT TO THIS ARTICLE FAILS THE
31 PREADMISSION SCREENING FOR INSTITUTIONAL SERVICES PURSUANT TO SUBSECTION A OF
32 THIS SECTION AT THE TIME OF A REASSESSMENT, THE ADMINISTRATION MAY ADMINISTER
33 A SECOND PREADMISSION SCREENING DESIGNED TO MEASURE THE FUNCTIONING LEVEL OF
34 THE PERSON BASED ON RULES ADOPTED BY THE DIRECTOR. IF THE PERSON MEETS THE
35 ESTABLISHED THRESHOLDS OF THE FUNCTIONAL PREADMISSION SCREENING, THE PERSON
36 IS ELIGIBLE FOR HOME AND COMMUNITY BASED SERVICES PURSUANT TO SECTION
37 36-2999.11, SUBSECTION A, PARAGRAPHS 2, 3 AND 4, SUBSECTION B, PARAGRAPH 2
38 AND SUBSECTION C. IF A PERSON WHO IS DETERMINED ELIGIBLE PURSUANT TO THIS
39 SUBSECTION IS INSTITUTIONALIZED PURSUANT TO SECTION 36-2999.11, INCLUDING
40 RESIDENCE IN AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED,
41 INSTITUTION FOR MENTAL DISEASE, INPATIENT PSYCHIATRIC FACILITY OR NURSING
42 FACILITY, THE PERSON HAS A MAXIMUM OF NINETY DAYS TO VACATE THE INSTITUTIONAL
43 SETTING AND RELOCATE TO A HOME AND COMMUNITY BASED SETTING APPROVED PURSUANT
44 TO SECTION 36-2999.11.

45 E. IF THE PERSON IS DETERMINED NOT TO NEED SERVICES PURSUANT TO THIS
46 SECTION, THE ADMINISTRATION SHALL PROVIDE THE PERSON WITH INFORMATION ON

1 OTHER AVAILABLE COMMUNITY SERVICES.

2 F. THE ADMINISTRATION OR ITS DESIGNEE SHALL COMPLETE THE PREADMISSION
3 SCREENING UNDER SUBSECTION A OF THIS SECTION WITHIN EIGHT DAYS, EXCLUDING
4 SATURDAYS AND HOLIDAYS, AND EXCLUDING THE TIME PERIOD ALLOWED TO DETERMINE
5 ELIGIBILITY PURSUANT TO SECTION 36-2999.04.

6 G. IF A PACE PROGRAM THAT CONTRACTS WITH THE ADMINISTRATION IS
7 DISSATISFIED WITH ANY ACTION OR DECISION OF THE ADMINISTRATION REGARDING THE
8 ELIGIBILITY OF A PERSON FOR THE PACE PROGRAM AS PRESCRIBED IN THIS ARTICLE,
9 IT MAY FILE A GRIEVANCE IN ACCORDANCE WITH THE PROVIDER GRIEVANCE PROCEDURE
10 PRESCRIBED IN SECTION 36-2999.02, SUBSECTION I, PARAGRAPH 1. IF THE DIRECTOR
11 DETERMINES PURSUANT TO THE GRIEVANCE PROCESS THAT THE PERSON SHOULD HAVE BEEN
12 DETERMINED ELIGIBLE PURSUANT TO SECTION 36-2999.03, THE DIRECTOR MAY
13 REIMBURSE THE PACE PROGRAM FOR THE NET COST OF SERVICES PROVIDED PURSUANT TO
14 THIS ARTICLE AFTER THE CUMULATIVE TIME PERIODS ALLOWED PURSUANT TO SECTION
15 36-2999.04 AND THIS SECTION.

16 H. IN ADDITION TO THE PREADMISSION SCREENING PROGRAM ESTABLISHED IN
17 THIS SECTION, THE ADMINISTRATION SHALL IMPLEMENT THE PREADMISSION SCREENING
18 PROGRAM AS SET FORTH IN SECTION 1919 OF THE SOCIAL SECURITY ACT. FOR PERSONS
19 APPLYING FOR ADMISSION TO A TITLE XIX CERTIFIED NURSING CARE INSTITUTION, AN
20 INITIAL LEVEL I PREADMISSION SCREENING SHALL BE CONDUCTED BY THE
21 ADMINISTRATION ON ALL NURSING CARE INSTITUTION APPLICANTS WHO ARE APPLYING
22 FOR ELIGIBILITY PURSUANT TO SECTION 36-2999.03 AND BY THE NURSING CARE
23 INSTITUTION ON ALL OTHER NURSING CARE INSTITUTION APPLICANTS. THE
24 ADMINISTRATION SHALL DEVELOP A UNIFORM IDENTIFICATION SCREENING INSTRUMENT
25 THAT SHALL BE USED BY THE NURSING CARE INSTITUTION AND THE ADMINISTRATION IN
26 CONDUCTING THE INITIAL LEVEL I SCREENINGS. IF THE IDENTIFICATION SCREENING
27 INDICATES THE APPLICANT MAY BE MENTALLY ILL, THE APPLICANT SHALL BE REFERRED
28 TO THE DEPARTMENT OF HEALTH SERVICES, WHICH SHALL CONDUCT THE LEVEL II
29 PREADMISSION SCREENING REVIEW USING A LEVEL II SCREENING INSTRUMENT DEVELOPED
30 BY THE DEPARTMENT OF HEALTH SERVICES. IF THE IDENTIFICATION SCREENING
31 INDICATES THE APPLICANT MAY BE MENTALLY RETARDED, THE APPLICANT SHALL BE
32 REFERRED TO THE DEPARTMENT OF HEALTH SERVICES, WHICH SHALL CONDUCT THE LEVEL
33 II PREADMISSION SCREENING REVIEW USING A LEVEL II SCREENING INSTRUMENT
34 DEVELOPED BY THE DEPARTMENT OF HEALTH SERVICES.

35 I. WITHIN TEN WORKING DAYS A NURSING CARE INSTITUTION SHALL NOTIFY THE
36 DEPARTMENT OF HEALTH SERVICES FOR A PERSON WHO IS MENTALLY ILL ABOUT ANY
37 SIGNIFICANT CHANGE THAT OCCURS IN THE PHYSICAL OR MENTAL CONDITION OF A
38 MEMBER WHO IS RESIDING IN THE NURSING CARE INSTITUTION. THE DEPARTMENT OF
39 HEALTH SERVICES SHALL CONDUCT A SUBSEQUENT LEVEL II SCREENING REVIEW OF THE
40 MEMBER WITHIN THE TIME FRAME REQUIRED BY THE ADMINISTRATION AFTER THE
41 NOTIFICATION BY THE NURSING CARE INSTITUTION.

42 36-2999.09. Effective date of PACE programs' responsibility

43 A. IF A PERSON IS ELIGIBLE FOR SERVICES UNDER ARTICLE 1 OF THIS
44 CHAPTER, THE PROVIDER WITH WHOM THE MEMBER IS ENROLLED UNDER ARTICLE 1 OF
45 THIS CHAPTER IS RESPONSIBLE FOR PROVIDING SERVICES COVERED UNDER ARTICLE 1 OF
46 THIS CHAPTER UNTIL THE DATE OF ELIGIBILITY FOR THE PACE PROGRAM SPECIFIED IN

1 CONTRACT OR UNTIL THE ELIGIBLE PERSON OR MEMBER IS NO LONGER ELIGIBLE UNDER
2 ARTICLE 1 OF THIS CHAPTER, WHICHEVER OCCURS FIRST.

3 B. FOR A PERSON WHO IS NOT A MEMBER OR ELIGIBLE PERSON UNDER ARTICLE 1
4 OF THIS CHAPTER ON THE DATE OF ELIGIBILITY, THE PACE PROGRAM IS RESPONSIBLE
5 BEGINNING ON THE DATE SPECIFIED IN CONTRACT FOR PROVIDING SERVICES PURSUANT
6 TO THIS ARTICLE. IF THE PERSON IS RETROACTIVELY ELIGIBLE PURSUANT TO FEDERAL
7 LAW PRIOR TO THE DATE THAT THE PACE PROGRAM ASSUMES RESPONSIBILITY, THE
8 ADMINISTRATION SHALL REIMBURSE NONCONTRACTING PROVIDERS FROM THE ARIZONA
9 LONG-TERM CARE FUND FOR SERVICES THAT ARE COVERED UNDER THIS ARTICLE AND THAT
10 ARE PROVIDED TO AN ELIGIBLE PERSON DURING THE PERIOD OF RETROACTIVE
11 ELIGIBILITY. REIMBURSEMENT SHALL NOT BE MADE FOR A SERVICE PROVIDED DURING
12 THE PERIOD OF RETROACTIVE ELIGIBILITY THAT DOES NOT QUALIFY FOR MONIES UNDER
13 TITLE XIX OF THE SOCIAL SECURITY ACT. THE DIRECTOR SHALL ADOPT RULES
14 PRESCRIBING REIMBURSEMENT LEVELS FOR SERVICES PROVIDED DURING THE PERIOD OF
15 RETROACTIVE ELIGIBILITY THAT ARE CONSISTENT WITH FEDERAL LAW. COVERED
16 INPATIENT HOSPITAL SERVICES PROVIDED DURING THE PERIOD OF RETROACTIVE
17 ELIGIBILITY SHALL NOT BE REIMBURSED AT A LEVEL HIGHER THAN PRESCRIBED IN
18 SECTION 36-2903.01.

19 36-2999.10. Case management; definition

20 A. THE PACE PROGRAM SHALL PROVIDE CASE MANAGEMENT TO COORDINATE
21 SERVICES AND PROMOTE ACCESS TO ALL NECESSARY MEDICAL, SOCIAL AND OTHER
22 SERVICES IN COORDINATION WITH RULES ADOPTED BY THE DIRECTOR. CASE MANAGEMENT
23 SERVICES INCLUDE THE FOLLOWING:

24 1. AN IN-DEPTH ASSESSMENT TO DETERMINE THE LEVEL OF CASE MANAGEMENT
25 NEEDED AND SERVICES TO BE ACCESSED.

26 2. AN INDIVIDUAL CASE MANAGEMENT SERVICE PLAN OUTLINING NEEDED
27 SERVICES AND ACCESS PLANS.

28 3. SERVICE PLAN IMPLEMENTATION TO INCLUDE COUNSELING TO ENCOURAGE THE
29 PACE PARTICIPANT'S COOPERATION, SERVICE AUTHORIZATION, REFERRAL FOR SERVICES
30 AND CASE COORDINATION.

31 4. A REVIEW OF THE SERVICE PLAN WILL BE CONDUCTED ON AN AS NEEDED
32 BASIS, AT A MINIMUM OF AT LEAST ONCE EACH SIX MONTH PERIOD OF COVERAGE.

33 B. A PACE PROGRAM SHALL PROVIDE PAYMENT OR REIMBURSEMENT ONLY FOR
34 SERVICES PROVIDED PURSUANT TO THIS ARTICLE UNDER REFERRAL FROM ITS
35 INTERDISCIPLINARY TEAM THAT CONDUCTS CASE MANAGEMENT.

36 C. FOR THE PURPOSES OF THIS SECTION, "CASE MANAGEMENT" MEANS A SERVICE
37 THAT WILL DIRECT MEMBERS TO THE MOST APPROPRIATE AMOUNT, DURATION AND TYPE OF
38 SERVICES AND CONTINUALLY MONITOR AND REASSESS A MEMBER'S NEED FOR SERVICES
39 PROVIDED PURSUANT TO THIS ARTICLE.

40 36-2999.11. PACE program services

41 A. THE FOLLOWING SERVICES SHALL BE PROVIDED BY THE PACE PROGRAM TO
42 MEMBERS DETERMINED TO NEED INSTITUTIONAL SERVICES PURSUANT TO THIS ARTICLE:

43 1. NURSING FACILITY SERVICES OTHER THAN SERVICES IN AN INSTITUTION FOR
44 TUBERCULOSIS OR MENTAL DISEASE.

45 2. NOTWITHSTANDING ANY OTHER LAW, BEHAVIORAL HEALTH SERVICES IF THESE
46 SERVICES ARE NOT DUPLICATIVE OF LONG-TERM CARE SERVICES PROVIDED AS OF

1 JANUARY 30, 1993 UNDER THIS SUBSECTION AND ARE AUTHORIZED BY THE PACE PROGRAM
2 THROUGH THE INTERDISCIPLINARY TEAM CASE MANAGEMENT SYSTEM.

3 3. HOSPICE SERVICES. FOR THE PURPOSES OF THIS PARAGRAPH, "HOSPICE"
4 MEANS A PROGRAM OF PALLIATIVE AND SUPPORTIVE CARE FOR TERMINALLY ILL MEMBERS
5 AND THEIR FAMILIES OR CAREGIVERS.

6 4. CASE MANAGEMENT SERVICES AS PROVIDED IN SECTION 36-2999.10.

7 5. HEALTH AND MEDICAL SERVICES AS PROVIDED IN SECTION 36-2907.

8 B. IN ADDITION TO SERVICES PRESCRIBED IN SUBSECTION A OF THIS SECTION,
9 HOME AND COMMUNITY BASED SERVICES MAY BE PROVIDED IN A MEMBER'S HOME, IN AN
10 ADULT FOSTER CARE HOME AS DEFINED IN SECTION 36-401, IN AN ASSISTED LIVING
11 HOME OR ASSISTED LIVING CENTER AS DEFINED IN SECTION 36-401 OR IN A LEVEL ONE
12 OR LEVEL TWO BEHAVIORAL HEALTH ALTERNATIVE RESIDENTIAL FACILITY APPROVED BY
13 THE DIRECTOR BY PACE PROGRAMS TO ALL MEMBERS WHO ARE DETERMINED TO NEED
14 INSTITUTIONAL SERVICES PURSUANT TO THIS ARTICLE. MEMBERS RESIDING IN AN
15 ASSISTED LIVING CENTER MUST BE PROVIDED THE CHOICE OF SINGLE OCCUPANCY. THE
16 DIRECTOR MAY ALSO APPROVE OTHER LICENSED RESIDENTIAL FACILITIES AS
17 APPROPRIATE ON A CASE BY CASE BASIS FOR TRAUMATIC BRAIN INJURED MEMBERS.
18 HOME AND COMMUNITY BASED SERVICES MAY INCLUDE THE FOLLOWING:

19 1. HOME HEALTH. FOR THE PURPOSES OF THIS PARAGRAPH, "HOME HEALTH"
20 MEANS THE PROVISION OF NURSING SERVICES OR HOME HEALTH AIDE SERVICES OR
21 MEDICAL SUPPLIES, EQUIPMENT AND APPLIANCES, WHICH ARE PROVIDED ON A PART-TIME
22 OR INTERMITTENT BASIS BY A LICENSED HOME HEALTH AGENCY WITHIN A MEMBER'S
23 RESIDENCE BASED ON A PHYSICIAN'S ORDERS AND IN ACCORDANCE WITH FEDERAL LAW.
24 PHYSICAL THERAPY, OCCUPATIONAL THERAPY OR SPEECH AND AUDIOLOGY SERVICES
25 PROVIDED BY A HOME HEALTH AGENCY MAY BE PROVIDED IN ACCORDANCE WITH FEDERAL
26 LAW. HOME HEALTH AGENCIES SHALL COMPLY WITH FEDERAL BONDING REQUIREMENTS IN
27 A MANNER PRESCRIBED BY THE ADMINISTRATION.

28 2. HOME HEALTH AIDE. FOR THE PURPOSES OF THIS PARAGRAPH, "HOME HEALTH
29 AIDE" MEANS A SERVICE THAT PROVIDES INTERMITTENT HEALTH MAINTENANCE,
30 CONTINUED TREATMENT OR MONITORING OF A HEALTH CONDITION AND SUPPORTIVE CARE
31 FOR ACTIVITIES OF DAILY LIVING PROVIDED WITHIN A MEMBER'S RESIDENCE.

32 3. HOMEMAKER. FOR THE PURPOSES OF THIS PARAGRAPH, "HOMEMAKER" MEANS A
33 SERVICE THAT PROVIDES ASSISTANCE IN THE PERFORMANCE OF ACTIVITIES RELATED TO
34 HOUSEHOLD MAINTENANCE WITHIN A MEMBER'S RESIDENCE.

35 4. PERSONAL CARE. FOR THE PURPOSES OF THIS PARAGRAPH, "PERSONAL CARE"
36 MEANS A SERVICE THAT PROVIDES ASSISTANCE TO MEET ESSENTIAL PHYSICAL NEEDS
37 WITHIN A MEMBER'S RESIDENCE.

38 5. ADULT DAY HEALTH. FOR THE PURPOSES OF THIS PARAGRAPH, "ADULT DAY
39 HEALTH" MEANS A SERVICE THAT PROVIDES PLANNED CARE SUPERVISION AND
40 ACTIVITIES, PERSONAL CARE, PERSONAL LIVING SKILLS TRAINING, MEALS AND HEALTH
41 MONITORING IN A GROUP SETTING DURING A PORTION OF A CONTINUOUS TWENTY-FOUR
42 HOUR PERIOD. ADULT DAY HEALTH INCLUDES PREVENTIVE, THERAPEUTIC AND
43 RESTORATIVE HEALTH RELATED SERVICES THAT DO NOT INCLUDE BEHAVIORAL HEALTH
44 SERVICES.

45 6. HABILITATION. FOR THE PURPOSES OF THIS PARAGRAPH, "HABILITATION"
46 MEANS THE PROVISION OF PHYSICAL THERAPY, OCCUPATIONAL THERAPY OR SPEECH OR

1 AUDIOLOGY SERVICES OR TRAINING IN INDEPENDENT LIVING, SPECIAL DEVELOPMENTAL
2 SKILLS, SENSORY-MOTOR DEVELOPMENT, BEHAVIOR INTERVENTION, AND ORIENTATION AND
3 MOBILITY IN ACCORDANCE WITH FEDERAL LAW.

4 7. RESPITE CARE. FOR THE PURPOSES OF THIS PARAGRAPH, "RESPITE CARE"
5 MEANS A SERVICE THAT PROVIDES SHORT-TERM CARE AND SUPERVISION AVAILABLE ON A
6 TWENTY-FOUR HOUR BASIS.

7 8. TRANSPORTATION. FOR THE PURPOSES OF THIS PARAGRAPH,
8 "TRANSPORTATION" MEANS A SERVICE THAT PROVIDES OR ASSISTS IN OBTAINING
9 TRANSPORTATION FOR THE MEMBER.

10 9. HOME DELIVERED MEALS. FOR THE PURPOSES OF THIS PARAGRAPH, "HOME
11 DELIVERED MEALS" MEANS A SERVICE THAT PROVIDES FOR A NUTRITIOUS MEAL
12 CONTAINING AT LEAST ONE-THIRD OF THE RECOMMENDED DIETARY ALLOWANCE FOR AN
13 INDIVIDUAL AND THAT IS DELIVERED TO THE MEMBER'S RESIDENCE.

14 10. OTHER SERVICES OR LICENSED OR CERTIFIED SETTINGS APPROVED BY THE
15 DIRECTOR.

16 C. NOTWITHSTANDING SUBSECTIONS A AND B OF THIS SECTION, A SERVICE
17 SHALL NOT BE PROVIDED THAT DOES NOT QUALIFY FOR FEDERAL MONIES AVAILABLE
18 UNDER TITLE XIX OF THE SOCIAL SECURITY ACT OR A SECTION 1115 WAIVER.

19 36-2999.12. PACE programs; annual plan

20 A. THE ADMINISTRATION SHALL CONTRACT WITH PACE PROGRAMS PURSUANT TO
21 THIS SECTION OR SECTION 36-2999.15 USING A CONTRACT AS PRESCRIBED BY THE
22 DIRECTOR.

23 B. EACH PACE PROGRAM PURSUANT TO THIS SECTION SHALL ANNUALLY SUBMIT TO
24 THE DIRECTOR A COMPREHENSIVE PLAN FOR THE DELIVERY OF SERVICES TO MEMBERS.
25 THE PLAN SHALL INCLUDE NECESSARY INFORMATION AS DETERMINED BY THE DIRECTOR.

26 36-2999.13. Establishment of capitation rate

27 A. UNDER A PACE PROGRAM AGREEMENT AND 42 CODE OF FEDERAL REGULATIONS
28 SECTION 460.180, THE CENTERS FOR MEDICARE AND MEDICAID SERVICES SHALL MAKE A
29 PROSPECTIVE MONTHLY PAYMENT TO THE PACE PROGRAM OF A CAPITATION RATE FOR EACH
30 MEDICARE PARTICIPANT.

31 B. UNDER THE PACE PROGRAM AGREEMENT AND 42 CODE OF FEDERAL REGULATIONS
32 SECTION 460.182, THE ADMINISTRATION SHALL MAKE A PROSPECTIVE MONTHLY PAYMENT
33 TO THE PACE PROGRAM OF A CAPITATION RATE FOR EACH MEDICAID PARTICIPANT. THE
34 PACE PROGRAM MUST ACCEPT THE CAPITATION PAYMENT AS PAYMENT IN FULL FOR
35 MEDICAID PARTICIPANTS AND MAY NOT BILL, CHARGE, COLLECT OR RECEIVE ANY OTHER
36 FORM OF PAYMENT FROM THE ADMINISTRATION OR FROM OR ON BEHALF OF THE PACE
37 PARTICIPANT, EXCEPT AS FOLLOWS:

38 1. PAYMENT WITH RESPECT TO THE SHARE OF COST AND ANY AMOUNTS DUE UNDER
39 THE POSTELIGIBILITY TREATMENT OF INCOME.

40 2. MEDICARE PAYMENT RECEIVED FROM THE CENTERS FOR MEDICARE AND
41 MEDICAID SERVICES OR FROM OTHER PAYORS.

42 3. ADJUSTMENTS RELATED TO ENROLLMENT AND DISENROLLMENT OF PACE
43 PARTICIPANTS IN THE PACE PROGRAM.

44 4. FEE FOR SERVICE PAYMENTS BY THE ADMINISTRATION OR MEDICARE PRIOR TO
45 THE PACE PARTICIPANT BEING CAPITATED.

46 C. THE ADMINISTRATION SHALL REIMBURSE THE PACE PROGRAM THE AVERAGE

1 CAPITATION RATE PAID TO THE ARIZONA LONG-TERM CARE SYSTEM PROGRAM CONTRACTORS
2 WITHIN THE SAME COUNTY WEIGHTED BY THE NUMBER OF ENROLLEES BY PLACEMENT
3 SETTINGS. THE CAPITATION RATE PAID TO A PACE PROGRAM SHALL NOT EXCEED THE
4 AVERAGE RATE PROVIDED SYSTEM PROGRAM CONTRACTS WITHIN THE SAME COUNTY WITH
5 THE SAME DISTRIBUTION OF PLACEMENT SETTINGS.

6 D. AT LEAST THIRTY DAYS BEFORE FINALIZING THE CAPITATION RATES, THE
7 ADMINISTRATION SHALL SEND WRITTEN NOTICE OF THE PROPOSED CAPITATION RATES TO
8 THE PACE PROGRAM.

9 36-2999.14. PACE program applications and contracts; hospital
10 reimbursement; notice; multiple proposals

11 A. CONTRACTS FOR SERVICES RENDERED BY PACE PROGRAMS PURSUANT TO
12 SECTION 36-2999.12 SHALL BE AWARDED BY THE ADMINISTRATION ON A NONCOMPETITIVE
13 BID BASIS, IN ACCORDANCE WITH THE FEDERAL APPLICATION PROCESS, 42 CODE OF
14 FEDERAL REGULATIONS SECTION 460.12.

15 B. IN ACCORDANCE WITH SECTIONS 1894, 1905(a) AND 1934 OF THE SOCIAL
16 SECURITY ACT, PACE IS ESTABLISHED AS A STATE OPTION UNDER MEDICAID. THE
17 DIRECTOR SHALL SUBMIT AN AMENDMENT TO THE STATE'S MEDICAID PLAN, AUTHORIZING
18 THE IMPLEMENTATION OF PACE AS SOON AS PRACTICABLE BUT NOT LATER THAN
19 SEPTEMBER 1, 2005.

20 C. IF BEFORE IMPLEMENTING ANY PROVISION OF THIS ARTICLE, THE DIRECTOR
21 DETERMINES THAT A WAIVER OR AUTHORIZATION FROM A FEDERAL AGENCY IS NECESSARY
22 FOR IMPLEMENTATION OF PACE, THE DIRECTOR SHALL REQUEST THE WAIVER OR
23 AUTHORIZATION.

24 D. WITHIN NINETY DAYS AFTER APPLICATION SUBMISSION, THE ADMINISTRATION
25 SHALL DO ONE OF THE FOLLOWING IN ACCORDANCE WITH 42 CODE OF FEDERAL
26 REGULATIONS PART 460:

27 1. APPROVE THE APPLICATION.

28 2. DENY THE APPLICATION BASED ON NONCOMPLIANCE WITH FEDERAL AND STATE
29 STATUTES.

30 3. REQUEST ADDITIONAL INFORMATION NEEDED TO MAKE A FINAL
31 DETERMINATION.

32 E. IF THE ADMINISTRATION FAILS TO ACT WITHIN NINETY DAYS AFTER RECEIPT
33 OF THE APPLICATION OR ADDITIONAL REQUESTED INFORMATION, THE APPLICATION IS
34 DEEMED APPROVED.

35 F. THE ADMINISTRATION SHALL BEGIN ACCEPTING PACE PROGRAM APPLICATIONS
36 NOT LATER THAN OCTOBER 1, 2005.

37 G. HOSPITALS THAT RENDER CARE TO MEMBERS SHALL BE PAID BY THE PACE
38 PROGRAM AS PRESCRIBED IN SECTION 36-2903.01, OR A LOWER RATE THAT IS
39 NEGOTIATED BY THE PACE PROGRAM.

40 H. A PACE APPLICANT SHALL FILE A NOTICE OF INTENT TO ESTABLISH A PACE
41 PROGRAM WITH THE ADMINISTRATION AT LEAST SIXTY-FIVE DAYS BEFORE FILING AN
42 APPLICATION WITH THE ADMINISTRATION. AT A MINIMUM THE NOTICE SHALL DESCRIBE
43 THE SERVICE AREA FOR THE PROGRAM IN ACCORDANCE WITH THE FEDERAL APPLICATION
44 PROCESS PRESCRIBED IN 42 CODE OF FEDERAL REGULATIONS SECTION 460.12.

45 I. ON RECEIPT OF A NOTICE OF THE INTENT TO ESTABLISH A PACE PROGRAM
46 PURSUANT TO SUBSECTION H OF THIS SECTION, THE ADMINISTRATION SHALL PROVIDE

1 ADEQUATE PUBLIC NOTICE OF THE INTENT TO ESTABLISH A PACE PROGRAM AND INVITE
2 ALTERNATIVE PROPOSALS. THE ADMINISTRATION SHALL PROVIDE THIS NOTICE BY
3 PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE
4 PROGRAM WILL BE ESTABLISHED ONCE A WEEK FOR A TWO PERIOD AT A REASONABLE TIME
5 BEFORE APPLICATIONS ARE DUE. THE APPLICANT SHALL REIMBURSE THE ADMINISTRATOR
6 FOR ALL PUBLICATION COSTS. THE ADMINISTRATION SHALL PRESCRIBE A DEADLINE
7 AFTER WHICH IT SHALL NOT ACCEPT NEW APPLICATIONS FOR THE DEFINED SERVICE
8 AREA. THE DEADLINE SHALL BE AT LEAST SIXTY FIVE DAYS BUT NOT MORE THAN NINETY
9 DAYS AFTER THE INITIAL FILING OF INTENT TO ESTABLISH A PACE PROGRAM.

10 J. THE ADMINISTRATION SHALL AWARD CONTRACTS FOR SERVICES RENDERED BY
11 PACE PROGRAMS PURSUANT TO THIS ARTICLE. IF MULTIPLE PROPOSALS ARE SUBMITTED
12 FOR THE SAME SERVICE AREA, THE ADMINISTRATION MAY APPROVE ONLY THE PROPOSAL
13 THAT IS THE MOST RESPONSIVE AND COST EFFECTIVE AND THAT CONFORMS TO ALL OF
14 THE APPLICABLE REQUIREMENTS OF THIS ARTICLE. THE ADMINISTRATION MAY DEVELOP
15 ADDITIONAL CRITERIA TO EVALUATE COMPETING PROPOSALS THAT ARE CONSISTENT WITH
16 FEDERAL APPLICATION PROCESS PRESCRIBED IN 42 CODE OF THE FEDERAL REGULATIONS
17 SECTION 460.12.

18 36-2999.15. PACE program qualifications; financial solvency

19 A. A PACE ORGANIZATION MUST BE ONE OF THE FOLLOWING OR BE A DISTINCT
20 PART OF ONE OF THE FOLLOWING:

- 21 1. AN ENTITY OF A CITY, COUNTY, STATE OR TRIBAL GOVERNMENT.
- 22 2. A PRIVATE NONPROFIT ENTITY ORGANIZED FOR CHARITABLE PURPOSES UNDER
23 SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE OF 1986.

24 B. THE PACE PROGRAM'S SERVICE AREA MUST BE APPROVED BY CENTERS FOR
25 MEDICARE AND MEDICAID SERVICES AND THE ADMINISTRATION.

26 C. THE PACE PROGRAM MUST:

- 27 1. HAVE A GOVERNING BOARD THAT INCLUDES COMMUNITY REPRESENTATION.
- 28 2. BE ABLE TO PROVIDE THE COMPLETE SERVICE PACKAGE REGARDLESS OF
29 FREQUENCY OR DURATION OF SERVICES.
- 30 3. HAVE A PHYSICAL SITE TO PROVIDE ADULT DAY SERVICES.
- 31 4. HAVE A DEFINED SERVICE AREA.
- 32 5. HAVE SAFEGUARDS AGAINST CONFLICT OF INTEREST.
- 33 6. HAVE A DEMONSTRATED FISCAL SOUNDNESS.
- 34 7. HAVE A FORMAL PARTICIPANTS BILL OF RIGHTS.

35 D. PACE PROGRAMS ASSUME THE RISK FOR PROVIDING SERVICES UNDER CONTRACT
36 WITH THE ADMINISTRATION AND MUST MAINTAIN SOUND FINANCIAL MANAGEMENT
37 PROCEDURES, MAINTAIN PROTECTIONS AGAINST INSOLVENCY AND GENERATE PERIODIC
38 FINANCIAL REPORTS FOR SUBMISSION TO THE ADMINISTRATION.

39 E. EACH PACE PROGRAM PURSUANT TO THIS SECTION MUST SUBMIT AN ANNUAL
40 AUDITED FINANCIAL AND PROGRAMMATIC REPORT FOR THE PRECEDING FISCAL YEAR AS
41 REQUIRED BY THE ADMINISTRATION. THE REPORT MUST INCLUDE:

- 42 1. BEGINNING AND ENDING BALANCES, REVENUES AND EXPENDITURES INCLUDING
43 SPECIFIC IDENTIFICATION OF ADMINISTRATIVE COSTS.
- 44 2. THE NUMBER OF PACE PARTICIPANTS SERVED BY THE PACE PROGRAM AND THE
45 COST INCURRED FOR VARIOUS TYPES OF SERVICES PROVIDED TO MEMBERS IN A FORMAT
46 PRESCRIBED BY THE DIRECTOR.

1 F. THE DIRECTOR SHALL REQUIRE CONTRACT TERMS NECESSARY TO ENSURE
2 ADEQUATE PERFORMANCE BY THE PACE PROGRAM OF THE PROVISIONS OF EACH CONTRACT
3 EXECUTED PURSUANT TO THIS SECTION. CONTRACT PROVISIONS REQUIRED BY THE
4 DIRECTOR MUST INCLUDE THE MAINTENANCE OF DEPOSITS, PERFORMANCE BONDS,
5 FINANCIAL RESERVES OR OTHER FINANCIAL SECURITY.

6 36-2999.16. Removal of medicaid special exemption for payments
7 to PACE programs; civil penalty

8 A. NOTWITHSTANDING ANY OTHER LAW, EACH PACE PROGRAM SHALL PAY TO THE
9 DIRECTOR OF THE DEPARTMENT OF INSURANCE A TAX EQUAL TO TWO PER CENT OF THE
10 TOTAL CAPITATION, INCLUDING REINSURANCE, AND ANY OTHER REIMBURSEMENT PAID TO
11 THE PACE PROGRAM BY THE ADMINISTRATION FOR PERSONS ELIGIBLE PURSUANT TO
12 SECTION 36-2999.01, PARAGRAPH 6. THE TAX SHALL BE PAID IN FOUR PAYMENTS
13 PURSUANT TO SUBSECTION C OF THIS SECTION AND DEPOSITED, PURSUANT TO SECTIONS
14 35-146 AND 35-147, IN THE STATE GENERAL FUND.

15 B. THE PACE PROGRAM SHALL NOT DEDUCT ANY DISALLOWANCE OR PENALTY
16 IMPOSED BY THE ADMINISTRATION PURSUANT TO THIS CHAPTER FROM THE FINANCIAL
17 INFORMATION SUBMITTED TO THE DIRECTOR OF THE DEPARTMENT OF INSURANCE.

18 C. EACH PACE PROGRAM MUST FILE THE ESTIMATED TAX AND DOCUMENTATION
19 WITH THE DIRECTOR OF THE DEPARTMENT OF INSURANCE ON A FORM PRESCRIBED BY THE
20 DIRECTOR OF THE DEPARTMENT OF INSURANCE. A PACE PROGRAM SHALL MAKE ESTIMATED
21 TAX PAYMENTS TO THE DIRECTOR OF THE DEPARTMENT OF INSURANCE FOR DEPOSIT IN
22 THE STATE GENERAL FUND PURSUANT TO SECTIONS 35-146 AND 35-147. THE TAX
23 PAYMENTS ARE DUE ON OR BEFORE SEPTEMBER 15, DECEMBER 15, MARCH 15 AND JUNE 15
24 OF EACH YEAR. THE AMOUNT OF THE PAYMENTS SHALL BE AN ESTIMATE OF THE TAX DUE
25 FOR THE QUARTER THAT ENDS IN THE MONTH THAT PAYMENT IS DUE.

26 D. ON OR BEFORE APRIL 1, 2006 AND ANNUALLY ON OR BEFORE APRIL 1
27 THEREAFTER, THE DIRECTOR OF THE DEPARTMENT OF INSURANCE SHALL USE DATA
28 PROVIDED BY THE ADMINISTRATION TO RECONCILE THE AMOUNT PAID BY EACH PACE
29 PROGRAM PURSUANT TO THIS SECTION WITH THE ACTUAL AMOUNT OF TITLE XIX
30 REIMBURSEMENT MADE BY THE ADMINISTRATION TO THE PACE PROGRAM IN THE PRECEDING
31 CALENDAR YEAR. IF THERE IS A DISCREPANCY IN THE TWO AMOUNTS, THE DIRECTOR OF
32 THE DEPARTMENT OF INSURANCE SHALL NOTIFY THE PACE PROGRAM OF THE DIFFERENCE,
33 PROVIDE A NOTICE OF RIGHT OF APPEAL AND BILL THE PACE PROGRAM FOR THE UNPAID
34 AMOUNT OF THE PREMIUM TAX OR, IF THERE IS AN OVERPAYMENT, THE DIRECTOR OF THE
35 DEPARTMENT OF INSURANCE SHALL EITHER REFUND THE AMOUNT OF THE OVERPAYMENT TO
36 THE PACE PROGRAM OR ISSUE A CREDIT FOR THE AMOUNT OF THE OVERPAYMENT THAT THE
37 PACE PROGRAM CAN APPLY AGAINST FUTURE TAX OBLIGATIONS PRESCRIBED BY THIS
38 SECTION.

39 E. A PACE PROGRAM THAT FAILS TO FILE AN ESTIMATED PAYMENT OR PAY AN
40 UNPAID PREMIUM TAX AS PRESCRIBED BY THIS SECTION IS SUBJECT TO A CIVIL
41 PENALTY EQUAL TO THE GREATER OF TWENTY-FIVE DOLLARS OR FIVE PER CENT OF THE
42 AMOUNT DUE AND IS SUBJECT TO INTEREST ON THE AMOUNT DUE AT THE RATE OF ONE
43 PER CENT PER MONTH FROM THE DATE THE AMOUNT WAS DUE.

44 36-2999.17. Coordination of benefits; third party payments

45 A. THE ADMINISTRATION SHALL COORDINATE BENEFITS PROVIDED UNDER THIS
46 ARTICLE TO A MEMBER SO THAT ANY COSTS FOR SERVICES PAYABLE BY THE PACE

1 PROGRAM ARE COSTS AVOIDED OR RECOVERED FROM ANY AVAILABLE THIRD PARTY PAYOR.
2 THE ADMINISTRATION MAY REQUIRE THAT THE PACE PROGRAMS BE RESPONSIBLE FOR THE
3 COORDINATION OF BENEFITS PROVIDED PURSUANT TO THIS ARTICLE. THE PACE PROGRAM
4 SHALL ACT AS A PAYOR OF LAST RESORT FOR MEMBERS UNLESS SPECIFICALLY
5 PROHIBITED BY FEDERAL LAW. THE DIRECTOR SHALL REQUIRE MEMBERS TO ASSIGN
6 RIGHTS TO ALL TYPES OF MEDICAL BENEFITS TO WHICH THE MEMBER IS ENTITLED,
7 INCLUDING FIRST PARTY MEDICAL BENEFITS UNDER AUTOMOBILE INSURANCE POLICIES.
8 THIS STATE HAS A RIGHT TO SUBROGATION AGAINST ANY OTHER PERSON TO ENFORCE THE
9 ASSIGNMENT OF MEDICAL BENEFITS. THE PROVISIONS OF THIS SUBSECTION ARE
10 CONTROLLING OVER THE PROVISIONS OF AN INSURANCE POLICY THAT PROVIDES BENEFITS
11 TO A MEMBER IF THE POLICY IS INCONSISTENT WITH THIS SUBSECTION. THE
12 ADMINISTRATION SHALL MONITOR THIRD PARTY PAYMENTS COLLECTED BY PROVIDERS AND
13 NONCONTRACTING PROVIDERS. FOR THE PURPOSES OF THIS SECTION, BENEFITS FROM
14 THIRD PARTY PAYORS DO NOT INCLUDE MONIES AVAILABLE UNDER THE OLDER AMERICANS
15 ACT OF 1965 OR A SOCIAL SERVICES BLOCK GRANT.

16 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, BEGINNING OCTOBER 1,
17 2005, AND IN ACCORDANCE WITH SECTION 4402 OF THE OMNIBUS BUDGET
18 RECONCILIATION ACT OF 1990, IF THE ADMINISTRATION DETERMINES THAT ACCORDING
19 TO FEDERAL GUIDELINES IT IS MORE COST EFFECTIVE FOR A PERSON DEEMED ELIGIBLE
20 UNDER SECTION 36-2999.04 TO BE ENROLLED IN A GROUP HEALTH INSURANCE PLAN IN
21 WHICH THE PERSON IS ENTITLED TO BE ENROLLED, THE ADMINISTRATION SHALL PAY ALL
22 OF THAT PERSON'S PREMIUMS, DEDUCTIBLES, COINSURANCE AND OTHER COST SHARING
23 OBLIGATIONS FOR SERVICES COVERED UNDER SECTION 36-2999.04. THE PERSON SHALL
24 APPLY FOR ENROLLMENT IN THE GROUP HEALTH INSURANCE PLAN AS A CONDITION OF
25 ELIGIBILITY UNDER SECTION 36-2999.04.

26 36-2999.18. PACE programs; additional responsibilities

27 A. PACE PROGRAMS SHALL ESTABLISH AND SUBMIT TO THE DIRECTOR FOR THE
28 DIRECTOR'S APPROVAL UTILIZATION CONTROL SYSTEMS COMPRISED OF PRIOR
29 AUTHORIZATION, CONCURRENT REVIEW AND RETROSPECTIVE REVIEW OF SERVICES.

30 B. IF A MEMBER IS NO LONGER ELIGIBLE FOR THE SYSTEM, THE PACE PROGRAM
31 SHALL NOTIFY THE ADMINISTRATION IN ACCORDANCE WITH RULES ADOPTED PURSUANT TO
32 SECTION 36-2999.02, SUBSECTION G. IF THAT MEMBER MAY BE ELIGIBLE FOR
33 SERVICES UNDER ARTICLE 1 OF THIS CHAPTER, THE PACE PROGRAM SHALL REFER THE
34 PERSON TO THE ADMINISTRATION AND ARRANGE FOR THE TRANSFER OF RECORDS TO THE
35 APPROPRIATE NONCONTRACTING PROVIDER AS DEFINED IN SECTION 36-2901 ON NOTICE
36 BY THE ADMINISTRATION.

37 36-2999.19. Prohibited collection practices

38 ON ORAL OR WRITTEN NOTICE FROM THE MEMBER OR PERSON THAT THE MEMBER OR
39 PERSON BELIEVES THE CLAIMS TO BE COVERED BY THE PACE PROGRAM, A PROVIDER OR
40 NONCONTRACTING PROVIDER SHALL NOT DO EITHER OF THE FOLLOWING UNLESS THE
41 PROVIDER OR NONCONTRACTING PROVIDER HAS VERIFIED THROUGH THE ADMINISTRATION
42 THAT THE MEMBER OR PERSON HAS NOT YET BEEN DETERMINED ELIGIBLE OR WAS NOT, AT
43 THE TIME SERVICES WERE RENDERED, ELIGIBLE OR ENROLLED:

44 1. CHARGE, SUBMIT A CLAIM TO OR DEMAND OR OTHERWISE COLLECT PAYMENT
45 FROM A MEMBER OR PERSON WHO HAS BEEN DETERMINED ELIGIBLE UNLESS SPECIFICALLY
46 AUTHORIZED BY THIS ARTICLE OR RULES ADOPTED PURSUANT TO THIS ARTICLE.

1 2. REFER OR REPORT A MEMBER OR PERSON WHO HAS BEEN DETERMINED ELIGIBLE
2 TO A COLLECTION AGENCY OR CREDIT REPORTING AGENCY FOR THE FAILURE OF THE
3 MEMBER OR PERSON WHO HAS BEEN DETERMINED ELIGIBLE TO PAY CHARGES FOR PACE
4 COVERED CARE OR SERVICES UNLESS SPECIFICALLY AUTHORIZED BY THIS ARTICLE OR
5 RULES ADOPTED PURSUANT TO THIS ARTICLE.

6 36-2999.20. Exemption from insurance laws

7 TO THE EXTENT THAT SERVICES ARE PROVIDED PURSUANT TO THIS ARTICLE, A
8 PACE PROGRAM IS NOT SUBJECT TO TITLE 20.

9 36-2999.21. County or special health care district PACE program
10 fund; uniform accounting

11 A. EACH COUNTY OR SPECIAL HEALTH CARE DISTRICT THAT OPERATES A PACE
12 PROGRAM PURSUANT TO THIS ARTICLE SHALL ESTABLISH AND MAINTAIN A COUNTY OR
13 SPECIAL HEALTH CARE DISTRICT PACE PROGRAM FUND AS A SEPARATE FUND TO
14 DISTINGUISH ITS REVENUES AND ITS EXPENDITURES PURSUANT TO THIS ARTICLE FROM
15 OTHER PROGRAMS FUNDED OR ADMINISTERED BY THE COUNTY OR SPECIAL HEALTH CARE
16 DISTRICT. THE FUND SHALL BE USED TO PAY ADMINISTRATIVE AND PROGRAM COSTS
17 ASSOCIATED WITH THE OPERATION OF THE PACE PROGRAM OR ALL OR ANY PART OF THE
18 COUNTY'S SHARE OF THE TOTAL NONFEDERAL PART OF THE ACTUAL COSTS OF THE PACE
19 PROGRAM. AMOUNTS PAID FOR ALL OR ANY PART OF THE COUNTIES' SHARE OF THE
20 TOTAL NONFEDERAL PART OF THE ACTUAL COSTS OF THE PACE PROGRAM PURSUANT TO
21 THIS SECTION SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, WITH
22 THE STATE TREASURER.

23 B. THE COUNTY OR SPECIAL HEALTH CARE DISTRICT PACE PROGRAM FUND SHALL
24 BE COMPRISED OF:

- 25 1. MONIES PAID BY THE ADMINISTRATION PURSUANT TO THE CONTRACT.
- 26 2. AMOUNTS PAID BY THIRD PARTY PAYORS.
- 27 3. GIFTS, DONATIONS AND GRANTS FROM ANY SOURCE.
- 28 4. INTEREST ON MONIES DEPOSITED IN THE PACE PROGRAM FUND.

29 C. A COUNTY OR SPECIAL HEALTH CARE DISTRICT SHALL NOT TRANSFER ANY
30 MONIES DEPOSITED IN THE COUNTY OR SPECIAL HEALTH CARE DISTRICT PACE PROGRAM
31 FUND EXCEPT AS PERMITTED BY THIS SUBSECTION. IF THERE ARE ANY UNEXPENDED
32 MONIES REMAINING IN THE FUND AT THE END OF ANY FISCAL YEAR, THE COUNTY OR
33 SPECIAL HEALTH CARE DISTRICT SHALL CARRY OVER THESE MONIES TO THE NEXT FISCAL
34 YEAR TO BE USED ONLY TO PROVIDE SERVICES PURSUANT TO THIS ARTICLE OR TO PAY
35 ALL OR ANY PART OF THE COUNTY'S SHARE OF THE TOTAL NONFEDERAL PART OF THE
36 ACTUAL COSTS OF THE PACE PROGRAM.

37 D. EACH COUNTY OR SPECIAL HEALTH CARE DISTRICT PACE PROGRAM SHALL
38 SUBMIT A PACE PROGRAM BUDGET AS PRESCRIBED BY THE ADMINISTRATION.

39 E. THE ADMINISTRATION SHALL PRESCRIBE A UNIFORM ACCOUNTING SYSTEM FOR
40 THE COUNTY AND SPECIAL HEALTH CARE DISTRICT PACE PROGRAM FUNDS. TECHNICAL
41 ASSISTANCE SHALL BE PROVIDED BY THE ADMINISTRATION TO THE COUNTY OR TO THE
42 SPECIAL HEALTH CARE DISTRICT IN ORDER TO FACILITATE THE IMPLEMENTATION OF THE
43 UNIFORM ACCOUNTING SYSTEM.

44 F. EACH COUNTY PACE PROGRAM SHALL SUBMIT AN ANNUAL AUDITED FINANCIAL
45 AND PROGRAMMATIC REPORT FOR THE PRECEDING FISCAL YEAR AS REQUIRED BY THE
46 ADMINISTRATION. THE REPORT SHALL INCLUDE BEGINNING AND ENDING FUND BALANCES,

1 REVENUES AND EXPENDITURES INCLUDING SPECIFIC IDENTIFICATION OF COUNTY
2 ADMINISTRATIVE COSTS FOR THE PACE PROGRAM. THE REPORT SHALL INCLUDE THE
3 NUMBER OF PARTICIPANTS SERVED BY THE PACE PROGRAM AND THE COST INCURRED FOR
4 VARIOUS TYPES OF SERVICES PROVIDED TO PARTICIPANTS IN A FORMAT PRESCRIBED BY
5 THE DIRECTOR.

6 G. EACH COUNTY OR SPECIAL HEALTH CARE DISTRICT PACE PROGRAM SHALL
7 SUBMIT ADDITIONAL UTILIZATION AND FINANCIAL REPORTS AS REQUIRED BY THE
8 DIRECTOR.

9 H. THE DIRECTOR SHALL MAKE AT LEAST AN ANNUAL REVIEW OF EACH COUNTY'S
10 OR SPECIAL HEALTH CARE DISTRICT'S RECORDS AND ACCOUNTS.

11 36-2999.22. Erroneous eligibility determination; state
12 liability

13 A. IF THE DIRECTOR DETERMINES THROUGH THE GRIEVANCE AND APPEAL
14 PROCEDURE PURSUANT TO A GRIEVANCE OR APPEAL FILED BY AN APPLICANT THAT THE
15 ADMINISTRATION MADE AN ERROR IN ELIGIBILITY DETERMINATION PURSUANT TO SECTION
16 36-2999.03 AND A PERSON WAS INCORRECTLY DETERMINED TO BE INELIGIBLE TO
17 RECEIVE PACE SERVICES, THE ADMINISTRATION SHALL REIMBURSE A PROVIDER OR
18 NONCONTRACTING PROVIDER FOR UNREIMBURSED SERVICES PROVIDED TO THE APPLICANT.

19 B. THE ADMINISTRATION SHALL MAKE REIMBURSEMENTS ONLY FOR SERVICES
20 PURSUANT TO THIS ARTICLE AND FROM THE DATE THE PERSON WAS INCORRECTLY
21 DETERMINED TO BE INELIGIBLE IF THE PERSON REMAINS ELIGIBLE OR UNTIL THE
22 PERSON IS ENROLLED IN THE PACE PROGRAM, WHICHEVER IS APPLICABLE.

23 36-2999.23. Inappropriate services; federal sanctions

24 A. NOTWITHSTANDING SECTION 36-2999.13, THE DIRECTOR SHALL ADOPT RULES
25 THAT PROVIDE THAT THE ADMINISTRATION SHALL WITHHOLD OR FORFEIT CAPITATION
26 PAYMENTS TO THE PACE PROGRAM PURSUANT TO SECTION 36-2999.13 IF THE PACE
27 PROGRAM PROVIDES INAPPROPRIATE SERVICES TO A PERSON DETERMINED ELIGIBLE
28 PURSUANT TO SECTION 36-2999.03 IN AN AMOUNT THAT EQUALS THE COST OF THE
29 APPROPRIATE SERVICES.

30 B. THE COST OF ANY FEDERAL SANCTIONS OR PENALTIES PLACED ON THE
31 ADMINISTRATION FOR ERRORS MADE BY THE PACE PROGRAM PURSUANT TO SECTION
32 36-2999.12, SUCH AS INAPPROPRIATE PROVISION OF SERVICES, SHALL BE RECOUPED
33 FROM THE PACE PROGRAM.

34 36-2999.24. Liens on damages for injuries

35 A. THE ADMINISTRATION IS ENTITLED TO A LIEN FOR THE CHARGES FOR
36 HOSPITAL, MEDICAL OR LONG-TERM CARE AND TREATMENT OF AN INJURED PERSON FOR
37 WHICH THE ADMINISTRATION OR A PACE PROGRAM IS RESPONSIBLE PURSUANT TO THIS
38 ARTICLE, ON ANY AND ALL CLAIMS FOR DAMAGES ACCRUING TO THE PERSON TO WHOM
39 HOSPITAL OR MEDICAL SERVICE IS RENDERED, OR TO THE LEGAL REPRESENTATIVE OF
40 THAT PERSON, ON ACCOUNT OF INJURIES GIVING RISE TO THESE CLAIMS AND THAT
41 NECESSITATED THE HOSPITAL OR MEDICAL CARE AND TREATMENT.

42 B. RECOVERY OF CHARGES PURSUANT TO THIS SECTION SHALL BE IN A MANNER
43 AS NEARLY AS POSSIBLE THE SAME AS THE PROCEDURES PRESCRIBED IN SECTIONS
44 36-2915 AND 36-2916.

45 36-2999.25. Prohibited acts; penalties

46 A. A PERSON SHALL NOT PRESENT OR CAUSE TO BE PRESENTED TO THE

1 ADMINISTRATION OR TO A PACE PROGRAM:
2 1. A CLAIM FOR AN ITEM OR SERVICE THAT THE PERSON KNOWS OR HAS REASON
3 TO KNOW WAS NOT PROVIDED AS CLAIMED.
4 2. A CLAIM FOR AN ITEM OR SERVICE THAT THE PERSON KNOWS OR HAS REASON
5 TO KNOW IS FALSE OR FRAUDULENT.
6 3. A CLAIM FOR PAYMENT THAT THE PERSON KNOWS OR HAS REASON TO KNOW MAY
7 NOT BE MADE BY THE PACE PROGRAM BECAUSE:
8 (a) THE PERSON WAS NOT A PACE PARTICIPANT ON THE DATE FOR WHICH THE
9 CLAIM IS BEING MADE.
10 (b) THE ITEM OR SERVICE CLAIMED IS SUBSTANTIALLY IN EXCESS OF THE
11 NEEDS OF THE INDIVIDUAL OR IS OF A QUALITY THAT FAILS TO MEET PROFESSIONALLY
12 RECOGNIZED STANDARDS OF CARE.
13 4. A CLAIM FOR A PHYSICIAN'S SERVICE, OR AN ITEM OR SERVICE INCIDENTAL
14 TO A PHYSICIAN'S SERVICE, BY A PERSON WHO KNOWS OR HAS REASON TO KNOW THAT
15 THE INDIVIDUAL WHO FURNISHED OR SUPERVISED THE FURNISHING OF THE SERVICE:
16 (a) WAS NOT LICENSED AS A PHYSICIAN.
17 (b) OBTAINED A LICENSE THROUGH A MISREPRESENTATION OF MATERIAL FACT.
18 (c) REPRESENTED TO THE PATIENT AT THE TIME THE SERVICE WAS FURNISHED
19 THAT THE PHYSICIAN WAS CERTIFIED IN A MEDICAL SPECIALTY BY A MEDICAL
20 SPECIALTY BOARD IF THE PERSON WAS NOT CERTIFIED.
21 5. A REQUEST FOR PAYMENT THAT THE PERSON KNOWS OR HAS REASON TO KNOW
22 IS IN VIOLATION OF AN AGREEMENT BETWEEN THE PERSON AND THE ADMINISTRATION OR
23 THE PACE PROGRAM.
24 B. A PERSON WHO VIOLATES A PROVISION OF SUBSECTION A IS SUBJECT, IN
25 ADDITION TO ANY OTHER PENALTIES THAT MAY BE PRESCRIBED BY LAW, TO A CIVIL
26 PENALTY OF NOT TO EXCEED TWO THOUSAND DOLLARS FOR EACH ITEM OR SERVICE
27 CLAIMED AND IS SUBJECT TO AN ASSESSMENT OF NOT TO EXCEED TWICE THE AMOUNT
28 CLAIMED FOR EACH ITEM OR SERVICE.
29 C. THE DIRECTOR OR THE DIRECTOR'S DESIGNEE SHALL MAKE THE
30 DETERMINATION TO ASSESS CIVIL PENALTIES AND IS RESPONSIBLE FOR THE COLLECTION
31 OF PENALTY AND ASSESSMENT AMOUNTS. THE DIRECTOR SHALL ADOPT RULES THAT
32 PRESCRIBE PROCEDURES FOR THE DETERMINATION AND COLLECTION OF CIVIL PENALTIES
33 AND ASSESSMENTS. CIVIL PENALTIES AND ASSESSMENTS IMPOSED UNDER THIS SECTION
34 MAY BE COMPROMISED BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE IN ACCORDANCE
35 WITH CRITERIA ESTABLISHED IN RULES. THE DIRECTOR OR THE DIRECTOR'S DESIGNEE
36 MAY MAKE A DETERMINATION IN THE SAME PROCEEDING TO EXCLUDE THE PERSON FROM
37 PACE PARTICIPATION.
38 D. A PERSON ADVERSELY AFFECTED BY A DETERMINATION OF THE DIRECTOR OR
39 THE DIRECTOR'S DESIGNEE UNDER THIS SECTION MAY APPEAL THAT DECISION IN
40 ACCORDANCE WITH GRIEVANCE PROVISIONS PRESCRIBED IN RULE. THE FINAL DECISION
41 IS SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH TITLE 12, CHAPTER 7,
42 ARTICLE 6.
43 E. AMOUNTS RECOVERED UNDER THIS SECTION SHALL BE DEPOSITED IN THE
44 ARIZONA LONG-TERM CARE SYSTEM FUND. THE AMOUNT OF THE PENALTY OR ASSESSMENT
45 MAY BE DEDUCTED FROM ANY AMOUNT THEN OR LATER OWING BY THE ADMINISTRATION TO
46 THE PERSON AGAINST WHOM THE PENALTY OR ASSESSMENT HAS BEEN IMPOSED.

1 F. IF A CIVIL PENALTY OR ASSESSMENT IMPOSED PURSUANT TO SUBSECTION C
2 IS NOT PAID, THIS STATE OR THE ADMINISTRATION SHALL FILE AN ACTION TO COLLECT
3 THE CIVIL PENALTY OR ASSESSMENT IN THE SUPERIOR COURT IN MARICOPA COUNTY.
4 MATTERS THAT WERE RAISED OR COULD HAVE BEEN RAISED IN A HEARING BEFORE THE
5 DIRECTOR OR IN AN APPEAL PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6 MAY NOT
6 BE RAISED AS A DEFENSE TO THE CIVIL ACTION. AN ACTION BROUGHT PURSUANT TO
7 THIS SUBSECTION SHALL BE INITIATED WITHIN SIX YEARS AFTER THE DATE THE CLAIM
8 WAS PRESENTED.

9 36-2999.26. Absence of federal financial participation; effect
10 on system operation

11 IF AT ANY TIME FEDERAL MONIES AS DESCRIBED IN SECTION 36-2999.02,
12 SUBSECTION I, PARAGRAPH 2 ARE DENIED, ARE NOT RENEWED OR BECOME UNAVAILABLE
13 FOR ANY REASON, THE PROVISIONS OF THIS ARTICLE RELATING TO THE OPERATION OF
14 THE PACE PROGRAM ARE SUSPENDED AND THE DIRECTOR SHALL NOTIFY EACH PACE
15 PROGRAM OF THAT FACT. NEITHER THE ADMINISTRATION NOR A PACE PROGRAM SHALL
16 PROVIDE SERVICES OTHERWISE AUTHORIZED BY THIS ARTICLE OR BE LIABLE FOR THE
17 COST OF SERVICES PROVIDED IF FEDERAL MONIES ARE UNAVAILABLE.

18 36-2999.27. Reimbursement rates; annual review

19 A. THE ADMINISTRATION SHALL CONTRACT WITH AN INDEPENDENT CONSULTING
20 FIRM FOR AN ANNUAL STUDY OF THE ADEQUACY AND APPROPRIATENESS OF TITLE XIX
21 REIMBURSEMENT RATES TO SERVICE PROVIDERS FOR THE PACE PROGRAM. THE
22 ADMINISTRATION MAY REQUIRE, AND THE ADMINISTRATION'S CONTRACTED PROVIDERS
23 SHALL PROVIDE, FINANCIAL DATA TO THE ADMINISTRATION IN THE FORMAT PRESCRIBED
24 BY THE ADMINISTRATION TO ASSIST IN THE STUDY. A COMPLETE STUDY OF
25 REIMBURSEMENT RATES SHALL BE COMPLETED AT LEAST ONCE EVERY FIVE YEARS.

26 B. THE ADMINISTRATION SHALL PROVIDE REPORTS TO THE JOINT LEGISLATIVE
27 BUDGET COMMITTEE BY OCTOBER 1 OF EACH YEAR.

28 C. IF RESULTS OF THE STUDY ARE NOT COMPLETELY INCORPORATED INTO THE
29 CAPITATION RATE, THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
30 ADMINISTRATION SHALL PROVIDE A REPORT TO THE JOINT LEGISLATIVE BUDGET
31 COMMITTEE WITHIN THIRTY DAYS OF SETTING THE FINAL CAPITATION RATE DISCUSSING
32 REASONS FOR DIFFERENCES BETWEEN THE RATE AND THE STUDY.

33 Sec. 2. Auditor general PACE program review

1 Not later than two years after enrollment begins in the first PACE
2 program as prescribed by this act, the auditor general shall conduct a
3 performance and financial audit as defined in section 41-1278, Arizona
4 Revised Statutes, of the PACE program. The audit shall include an
5 examination of the cost effectiveness of all PACE programs and shall assess
6 the impact of the PACE program on the program contractors. The auditor
7 general shall submit copies of the audits to the governor, the president of
8 the senate, the speaker of the house of representatives and the chairpersons
9 of the senate health committee and the house of representatives health
10 committee or their successor committees.

11 Sec. 3. Exemption from rule making

12 For the purposes of this act, the Arizona health care cost containment
13 system administration is exempt from the rule making requirements of title
14 41, chapter 6, Arizona Revised Statutes, for one year after the effective
15 date of this act.